

COMMONWEALTH OF PENNSYLVANIA  
HOUSE OF REPRESENTATIVES  
ENVIRONMENTAL RESOURCES AND ENERGY COMMITTEE

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In re: House Bill 2625  
Water Resources Planning

Stenographic report of hearing  
held in Majority Caucus Room,  
Harrisburg, Pennsylvania

Tuesday  
July 7, 1998  
10:00 a.m.

HON. ROBERT D. REBER, JR., CHAIRMAN

MEMBERS OF THE COMMITTEE

Hon. Brett Feese  
Hon. Camille George  
Hon. Jeffrey E. Habay  
Hon. Stanley J. Jarolin  
Hon. David K. Levdansky  
Hon. Albert Masland  
Hon. Eugene F. McGill  
Hon. Carole Rubley  
Hon. Jerry A. Stern  
Hon. Dan A. Surra  
Hon. Greg Vitali

Also Present:

Hon. Curt Schroder  
Fred Taylor, Executive Director

Reported by:  
Dorothy M. Malone, RPR

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1998-048

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1                   CHAIRMAN REBER: Good morning. I would  
2 like to call to order the Environmental Resources and  
3 Energy Committee for this duly scheduled public hearing  
4 on House Bill 2625. As I look around the room, it  
5 is sort of amazing to me, a few weeks ago this committee,  
6 with my co-chairman from the other side of the aisle,  
7 Representative George, we moved a very monumental piece  
8 of legislation, a \$450 million bond issue relative to  
9 water issues on mine reclamation, storm water management.  
10 You would have thought I guess by the size of the attendance  
11 at that hearing that it was a nothing piece of legislation  
12 in comparison to this. It is always amazing what brings  
13 people out of the woodwork. It must be a slow day at  
14 the capitol, if you will.

15                   Nonetheless I hope that all these people  
16 that are here today who apparently have a concern for  
17 water resources in the Commonwealth of Pennsylvania  
18 will take a hard look at that particular piece of legislation  
19 which will soon be acted on by the full House and lend  
20 its interest and we certainly hope support just like  
21 you apparently have for this particular piece of legislation.

22                   With that being said, I would like to  
23 move immediately, because we have a list of distinguished  
24 individuals to testify today on this particular issue  
25 relative to the Municipal Ground or Resource Planning.

1 Act, House Bill 2625, which has been directed and introduced  
2 by Representative Curt Schroder of Chester County.

3 Curt is not a member of our committee, but is the prime  
4 sponsor of this piece of legislation. I had asked him  
5 to join the committee panel today and at this time I  
6 would turn to Curt for a few opening remarks relative  
7 to House Bill 2625. Representative Schroder.

8 REPRESENTATIVE SCHRODER: Thank you,  
9 Chairman Reber and members of the committee. Good morning  
10 ladies and gentlemen. Thanks for the opportunity to  
11 have this hearing on House Bill 2625.

12 House Bill 2625 provides tools for local  
13 governments to better plan and protect the groundwater  
14 resources. This issue is of increasing concern of residents  
15 of southeastern Pennsylvania and Chester County in particular.  
16 Although there are a number of reasons to protect their  
17 groundwater resources, northern Chester County is facing  
18 the prospect of a bottled water company pumping 95,000  
19 gallons a day from a well, a spring site, in South Coventry  
20 Township. Now South Coventry is located in a groundwater  
21 protected area in southeastern Pennsylvania.

22 This proposal to extract such a large  
23 quantity of water has caused serious concern among township  
24 residents who fear a negative impact on their residential  
25 water supply as well as a negative impact on their streams.

1     Furthermore, this consumptive use of water does not  
2     return a single drop to the watershed.

3                     House Bill 2625 gives the opportunity  
4     for our local municipal government to address this situation.  
5     Specifically House Bill 2625 allows municipalities  
6     within the watershed to join together to create an integrated  
7     water resource plan, otherwise known as an IWRP. Included  
8     in the IWRP would be the establishment of limits and  
9     regulations for water withdrawal based upon sound hydrologic  
10    management principles and effective environmental protection.

11                    The plan would be submitted to the Department  
12    of Environmental Protection for review. A public hearing  
13    would be required by DEP. DEP would review the plan  
14    to make sure it is in compliance with this act, check  
15    for any conflicts with other plans and make sure it  
16    is consistent with the state comprehensive water plan.  
17    Once DEP gives its approval, each municipality has to  
18    decide whether to enact the plan as an amendment to  
19    its ordinances.

20                    Some points I would like to point out  
21    and stress, this is totally optional. No municipality  
22    is required to participate in the planning process,  
23    yet the planning process does not move forward without  
24    participation with all municipalities in the watershed.

25    Also, no municipality is required to adopt the plan

1 even if they participate in the planning process.

2 Now this bill is similar in concept to  
3 regulations adopted by the Delaware River Basin Commission  
4 recently that allowed planning on watershed bases in  
5 portions of the southeastern Pennsylvania groundwater  
6 protected area. Now there are differences that I acknowledge  
7 and the DRBC will probably be discussing this.

8 So, Chairman Reber, those are my opening  
9 comments and I look forward to hearing the testimony  
10 this morning. I thank you for bringing this bill before  
11 the committee and calling it to the attention of the  
12 members.

13 CHAIRMAN REBER: Thank you very much  
14 Representative Schroder. Next I would like to identify  
15 by going through all the members of the committee, the  
16 members that are present and the counties that they  
17 represent, for the record as well as for the information  
18 of the various individuals that will be testifying so  
19 that they do know that if there are occasional comments  
20 who those individuals are. I am starting with the lady  
21 from Chester to my far right. If she will identify  
22 herself and we'll go right down the line.

23 REPRESENTATIVE RUBLEY: I am Carol Rubley  
24 from Chester County.

25 REPRESENTATIVE MASLAND: Al Masland from

1 Cumberland and York Counties.

2 REPRESENTATIVE GEORGE: Camille George  
3 from Clearfield and Centre.

4 REPRESENTATIVE FEESE: Brett Feese, Lycoming  
5 County.

6 REPRESENTATIVE VITALI: Greg Vitali,  
7 Delaware County.

8 REPRESENTATIVE HABAY: Jeff Habay, Westmoreland  
9 County.

10 REPRESENTATIVE JAROLIN: Stanley Jarolin,  
11 Luzerne County.

12 REPRESENTATIVE SURRA: Dan Surra, Elk  
13 and Clearfield County.

14 REPRESENTATIVE MCGILL: Eugene McGill,  
15 Montgomery County.

16 REPRESENTATIVE STERN: Jerry Stern from  
17 Blair County.

18 CHAIRMAN REBER: Thank you very much,  
19 and I suspect we may have additional members of the  
20 committee joining us later in the morning.

21 Our first individual to testify is Deputy  
22 Secretary for Water Management out of the Department  
23 of Environmental Protection, Dr. Hugh Archer and with  
24 Dr. Archer, joining him at the table as part of this  
25 first panel, is Jeff Featherstone, Acting Executive  
Director

1 or for the DRBC. Gentlemen, thank you very much for  
2 taking time out of your very, very busy schedule and  
3 we look forward to hearing what comments you have today.

4 Dr. Archer, do you want to lead off?

5 DR. ARCHER: Good morning Mr. Chairman  
6 and distinguished members of the committee, ladies and  
7 gentlemen. My name is Hugh Archer. As Chairman Reber  
8 said, I am the Deputy Secretary in DEP for Water Manage-  
9 ment. Thank you sincerely for providing me with the  
10 opportunity to speak to you today about water resources  
11 management and House Bill 2625.

12 Water resources in the Commonwealth is  
13 at present being carried out through a combination of  
14 state and river basin commission activities. Land develop-  
15 ment decisions, that generate the need for water supply  
16 and water resource, are made at a local level.

17 The Water Rights Act of 1939 provides  
18 the Commonwealth with the authority to regulate only  
19 surface water withdrawals by public water supply agencies.  
20 DEP is charged with administering this program. The  
21 Commonwealth's limited authority to allocate water re-  
22 sources is significantly supplemented by two interstate  
23 river basin compact commissions, the Delaware River  
24 Basin Commission and the Susquehanna River Basin Commission.

25 Nearly one-half of the 13,539 square mile

1 Delaware River Basin lies in Pennsylvania accounting  
2 for a little more than 14 percent of the Commonwealth's  
3 land area. The Delaware River Basin Commission (DRBC)  
4 was formed by compact in 1961, partly out of concern  
5 for water allocations and out-of-basin diversions in  
6 the New York portion of the basin. In fact, there are  
7 three major reservoirs in the Delaware basin headwaters  
8 that serve as sources for the large New York City metropol-  
9 itan water system. Together, they represent a substantial  
10 out-of-basin diversion of water from the Delaware Basin  
11 to the Hudson Basin. The DRBC compact includes broad  
12 authority to manage the allocation of water and to arbi-  
13 trate differences between and among the compact members,  
14 which include the federal government, the states of  
15 New York, New Jersey, Delaware as well as the Common-  
16 wealth. The Commission's powers and duties include  
17 adopting and maintaining a comprehensive water resources  
18 plan for the basin, regulating and controlling surface  
19 water and ground water diversions and withdrawals, and  
20 delineating protected areas where existed or projected  
21 expected demands by water users have created a water  
22 shortage or conflict with the comprehensive plan. In  
23 1980, DRBC adopted a Ground Water Protected Area for  
24 Southeastern Pennsylvania. In January 1998, the Compact  
25 Commission amended its Ground Water Protected Area regula-

1 tions with the amendments establishing specific ground--  
2 water withdrawal limits within the Neshaminy Creek Sub-  
3 basin and it also provided for the adoption of similar  
4 limits in the remainder of the Ground Water Protected  
5 Area in the future.

6           The ~~Susquehanna~~ River encompasses more  
7 of the state's land area than any other drainage basin  
8 -- 20,960 square miles or approximately 46 percent of  
9 the state. More than three-quarters of the entire Susque-  
10 hanna Basin lies in Pennsylvania. In 1971 the Susquehanna  
11 River Basin Commission was formed by compact. Similar  
12 to that compact that created DRBC. Members of the commis-  
13 sion are Pennsylvania, New York, Maryland, and of course,  
14 the federal government. Like DRBC, SRBC ensures the  
15 wise management and protection of the non-renewable  
16 water resources of the basin and resolves interstate  
17 water resources concern. A recent example of SRBC's  
18 involvement in interstate issues is its current position  
19 that essentially requires the review of the City of  
20 Baltimore's plans to increase the volume of water taken  
21 from the Conowingo pool, which has several users both  
22 in Maryland and Pennsylvania. The ultimate concern  
23 of that proposal is the potential that there be potential  
24 widespread-sociopolitical, economic and environmental  
25 impacts if the basin's pools water resources are not

1 properly managed. In general, SRBC's powers and duties  
2 to manage water resources and regulate withdrawals and  
3 diversions of surface and groundwaters are similar to  
4 those of DRBC. There are no groundwater protected areas  
5 within the Susquehanna Basin.

6 By regulating both surface and groundwater  
7 withdrawals in excess of 100,000 gallons per day (gpd) by  
8 all water users and by regulating groundwater withdrawals  
9 exceeding 10,000 per day in the Ground Water Protected  
10 Area, DRBC and SRBC play an invaluable role in managing  
11 and protecting the Commonwealth's vast and valuable  
12 water resources.

13 While the Susquehanna Commission and  
14 the Delaware River Basin Commission are spoken about  
15 most frequently, Pennsylvania does participate in three  
16 other non-regulatory basin commissions. They are the  
17 Interstate Commission on the Potomac River, the Ohio  
18 River Basin Commission, and the Great Lakes Commission.

19 The Potomac Commission, the state's oldest  
20 compact -- was founded in 1940 and drains approximately  
21 14,670 square miles, 11 percent of which is in Pennsylvania.  
22 The Ohio Basin is the second largest of Pennsylvania's  
23 river basins, covering approximately 15,614 square miles  
24 of the state west of the Allegheny Mountains. Pennsyl-  
25 vania also encompasses 610 square miles of land area

1 draining to two of the Great Lakes--Lake Erie and Lake  
2 Ontario. Pennsylvania is a member of the Great Lakes  
3 Commission which was created in 1955 by a joint legisla-  
4 tive action of eight states and was granted Congressional  
5 consent in 1968.

6 To improve our coordination with river  
7 basin activities, which we think are vitally important,  
8 the department last year formed an office for River  
9 Basin Coordination headed by Irene Brooks.

10 I felt it was necessary to describe the  
11 existing roles of the Commonwealth and the various river  
12 basin commissions to give you a flavor for their varying  
13 degrees of authority, responsibility and accountability  
14 as they relate to water resources management in Pennsylvania.  
15 It is evident that the range of responsibility is rather  
16 wide and that different areas of the Commonwealth are  
17 managed under diverse sets of regulations and policies.

18 Through House Bill No. 2625, Representative  
19 Schroder is attempting to address what seems to be a  
20 growing concern over conflicts among water users and  
21 between water users and the public, particularly in  
22 southeastern Pennsylvania. As currently written, House  
23 Bill 2625 would empower municipalities, acting jointly  
24 within a watershed, to cooperate to enact, amend and  
25 repeal Integrated Water Resources Plans. The IWRP could

1 establish limits and regulations for water withdrawals  
2 and uses. It could also be made part of joint municipal  
3 zoning ordinances, subsequent to prescribed opportunity  
4 for public review and comment and approval by the Department.  
5 While the IWRP is to be developed through a joint effort,  
6 it would be effective only in those municipalities that  
7 adopt it by ordinance.

8           House Bill 2526 would also require the  
9 Department to provide grants and technical assistance  
10 for the development and implementation of the IWRPs,  
11 although the bill is silent on the source of funding  
12 for the grants and what type of technical assistance  
13 would be provided. The bill would also require the  
14 Department to consider the IWRP when reviewing applications  
15 for permits under the 1939 Water Rights Act and the  
16 Safe Drinking Water Act.

17           The Department strongly supports and  
18 endorses local government participation in water resource  
19 planning. Current law contained in the Municipal Planning  
20 Code already allows, but does not mandate, that municipalities  
21 consider water resources in land use planning. Recently,  
22 in an effort to ease the concern over diminishing ground  
23 water resources, the Delaware River Basin Commission  
24 adopted revisions to its Southeastern Pennsylvania Ground  
25 Water Protected Area regulations which, in part, allow

1 local governments to submit adopted IWRPs and to request  
2 ~~revisions of groundwater withdrawal limits established~~  
3 by DRBC for subbasins within the Ground Water Protected  
4 Area.

5 I should point out here, however, that  
6 existing case law implies that municipalities cannot  
7 individually regulate water resources themselves. In  
8 the Levin vs. Benner Township Zoning Hearing Board case,  
9 Commonwealth Court, affirmed by the Supreme Court, held  
10 that the Susquehanna River Basin Compact preempted regulation  
11 of water resources through local zoning.

12 In summary, the Department strongly supports  
13 local government being an active partner in water resources  
14 management. We believe, however, that a regional approach  
15 to the highly complex task of water resource planning  
16 and regulation must be fostered through the river basin  
17 commissions to be effective.

18 I sincerely appreciate the opportunity  
19 to testify before you today, and I look forward to working  
20 with you in the future to formulate effective and comprehensive  
21 water resource management legislation.

22 CHAIRMAN REBER: Thank you very much,  
23 Dr. Archer. I am going to move directly to Jeff Feathersone  
24 of the DRBC for a few comments. We have the prepared  
25 testimony, and that at that time after we have that

1 presentation, I will turn to members of the committee  
2 for some brief questioning. I have already now warned  
3 the members that we have a number of witnesses today  
4 and I would appreciate if the questions would be kept  
5 as brief as possible and not repetitive. Mr. Feather-  
6 stone, you may proceed.

7 MR. FEATHERSTONE: Mr. Chairman and members  
8 of the Environmental Resources and Energy Committee,  
9 the Delaware River Basin Commission staff appreciates  
10 the opportunity to provide comments on the proposed  
11 Municipal Groundwater Resource Planning Act and to testify  
12 here today. My name is Jeff Featherstone and I serve  
13 as Deputy Executive Director of the Commission. I am  
14 also serving as Acting Executive Director until August  
15 31st of this year. At that time, Ms. Carol Collier,  
16 a Commonwealth native and current Executive Director  
17 of the Pennsylvania's 21st Century Environment Commission,  
18 will take over the reins as the Commission's Executive  
19 Director and then I will be serving as Deputy Director.

20 For those of you who may not be familiar  
21 with the Commission, the agency was created in 1961  
22 by concurrent legislation of the four basin states and  
23 the federal government. This legislation, the Delaware  
24 River Basin Compact, provides for the joint exercise  
25 of sovereign powers over the water resources of the basin.

1 The Compact assigned the Commission with numerous powers,  
2 including coordination, planning, regulation, management,  
3 and development of water resources. Some of our more  
4 important responsibilities as set forth in the Compact  
5 include: establishing water quality standards; regulating  
6 and controlling water withdrawals and diversions from  
7 groundwater and surface water sources; planning and  
8 funding facilities for water supply and pollution control;  
9 and reviewing projects to ensure that they do not impair  
10 or conflict with the Commission's Comprehensive Plan.  
11 Our offices are located in West Trenton, New Jersey.

12 While the Commission itself has not taken  
13 a formal position on the proposed legislation, Commission  
14 staff has participated in many of the deliberations  
15 that have led to the current bill. In general, we support  
16 many aspects of the proposal. The legislation would  
17 complement the Commission's new amendments to its Southeastern  
18 Pennsylvania Ground Water Protected Area Program. However,  
19 as has been previously presented to the drafters of  
20 the proposal, we do have some concerns and reservations  
21 about certain provisions.

22 By way of background, the Southeastern  
23 Pennsylvania Ground Water Protected Area was created  
24 pursuant to Section 10.2 of the Compact. It was established  
25 by the Commission at the request of the Commonwealth

1 of Pennsylvania. The goal of the program is to prevent  
2 depletion of ground water, protect the interests and  
3 rights of lawful users of the same resource, and to  
4 balance and reconcile alternative and often conflicting  
5 uses of limited water resources in the region. The  
6 Protected Area includes all of Montgomery County and  
7 major portions of Bucks and Chester Counties.

8 The new amendments to the Protected Area  
9 Program are quite germane to the proposed legislation.

10 The new amendments establish numerical ground water  
11 withdrawal limits for watersheds in southeastern Pennsylvania.

12 The limits, derived from baseflow characteristics of  
13 geologic formations, apply to 14 subbasins in the Neshaminy  
14 Creek Basin. Limits for the remaining 52 subbasins  
15 within the Protected Area will be instituted in the  
16 near future, hopefully, within the next couple of months.  
17 Similar to the original 14, these limits also will be  
18 based upon baseflow analyses completed by the U.S. Geolog-  
19 ical Survey under contract with the Commission. The  
20 subbasins were delineated by the U.S.G.S and they typical-  
21 ly encompass about 20-25 square miles each and involve,  
22 roughly, three to five municipalities.

23 The new regulations establish procedures  
24 for updating and revising withdrawal limits to provide  
25 additional protection for subbasins with streams designated

1 by the Commonwealth as "high quality" or "exceptional  
2 value," or "wild", "scenic," or "pastoral" according  
3 to the state scenic rivers program. The Commission  
4 is currently working with the Department of Environmental  
5 Protection, Department of Conservation and Natural Resources  
6 and the Fish and Boat Commission on this matter. The  
7 Fish and Boat Commission is performing instream flow  
8 analyses for three stream segments in Chester County  
9 to identify possible additional levels of protection.

10 The new regulations also establish procedures  
11 for revising withdrawal limits to correspond with innovative  
12 resource plans or what we call IRPs, which is virtually  
13 similar to you IWRPs, that would be adopted by municipalities  
14 for subbasins. The regulations specify contents of  
15 IRPs and indicate that such plans shall be adopted and  
16 implemented by all municipalities within a subbasin  
17 and incorporated into each municipality's comprehensive  
18 plan.

19 We feel that the new amendments provide  
20 the Commission with a better framework to assess ground  
21 water problems. The subbasin approach allows us to  
22 address the broader aspects of ground and surface water  
23 development. The integrated resource planning component  
24 of the new regulations also allows the Commission to  
25 improve coordination with local government, and more

1 importantly, to be more proactive in addressing ground  
2 and surface water issues.

3 This brings me to the matter of this  
4 hearing. As stated before, the Commission staff supports  
5 many aspects of the proposed legislation. We strongly  
6 endorse the need for integrated resource planning. The  
7 proposed legislation would provide grants and technical  
8 assistance to municipalities to develop and implement  
9 IRPs. We believe that this is a critical role for the  
10 Commonwealth of Pennsylvania. Without this funding,  
11 many municipalities could not participate in such planning  
12 efforts. While the Commission's new regulations endorse  
13 integrated resource planning, we do not have the funding  
14 to provide municipalities to conduct such planning.

15 The Commission, as you are aware, is a small agency  
16 with a limited budget. While the Commission staff sup-  
17 ports providing funds to municipalities, we also believe  
18 that there is a need to provide funds to state agencies  
19 and counties to help them provide technical assistance  
20 to municipalities. More technical information still  
21 needs to be developed to better manage ground water.  
22 Ground water flow models should be developed to better  
23 define the interrelationships between ground water and  
24 surface water for specific subbasins. Instream flow  
25 needs assessments should be conducted for many streams

1 in southeastern Pennsylvania. Also, additional stream  
2 gages should be put into place to support planning and  
3 management activities. In my opinion, funds should  
4 be provided to state agencies to provide these services.

5 Counties also are in a unique position  
6 to help municipalities prepare integrated resource plans.

7 They can provide economies of scale and consistency  
8 in assisting municipalities in their planning efforts.

9 Many in Southeastern Pennsylvania have the technical  
10 capabilities already in place to provide this service.

11 The Chester County Water Resources Authority is one  
12 good example. The proposed legislation might consider  
13 providing funds to counties for this type of technical  
14 assistance.

15 While the Commission staff strongly supports  
16 the need to prepare integrated resources plans, we have  
17 some reservations about providing municipalities with  
18 the authority to regulate ground water withdrawals.

19 The Commission's new regulations do not provide for  
20 any delegation of regulatory powers to municipalities.

21 In our opinion, local regulation could result in significant  
22 fragmentation of regulatory powers leading to disjointed  
23 and conflicting management of a shared resource. Also,  
24 as many of you are aware, this issue is not without  
25 legal complexity. The recent decision in State College

1 Borough Water Authority v. Board of Supervisors of Benner  
2 Township held that river basin regulation of water withdrawals  
3 preempts municipal control. While the DRBC Compact  
4 provides for cooperative regulatory control between  
5 the Commission and the Commonwealth of Pennsylvania,  
6 it is unclear whether the Commission can share such  
7 control with municipalities.

8           The Commission has long supported a strong-  
9 er role for the Commonwealth of Pennsylvania in regulating  
10 ground water withdrawals and urges the Committee to  
11 consider state regulation of ground water withdrawals.  
12 Pennsylvania's neighbors, Delaware and New Jersey, have  
13 well-established programs to regulate ground water through  
14 state allocation permits. These permit programs allow  
15 states to enforce state policies when making allocation  
16 decisions. They also provide consistency in regulation.  
17 In Delaware and New Jersey, the Commission's regulatory  
18 role for ground water is streamlined and we concentrate  
19 on enforcing our basinwide interstate policies when  
20 issuing dockets and permits for ground water withdrawals.  
21 Providing similar authority to the Commonwealth could  
22 lead to a similar regulatory arrangement.

23           Another option is to continue with the  
24 present regulatory framework, but to provide funding  
25 to municipalities, as what is being proposed, for planning

1 purposes and to state agencies and counties for providing  
2 technical assistance. The Commission's Protected Area  
3 Program has been quite successful in addressing many  
4 of the critical, past problems in the region. Our new  
5 amendments should make it more proactive in addressing  
6 future issues. The Commonwealth of Pennsylvania funds  
7 the program entirely through a special line item in  
8 the state budget. For roughly \$250,000 a year, we believe  
9 that we are providing the Commonwealth of Pennsylvania  
10 a lot of "bang-for-the-buck."

11 The Commission staff also notes that  
12 the proposed legislation would allow municipalities  
13 to implement IRPs even if some of the affected municipalities  
14 do not choose to participate. This, in our opinion,  
15 would further complicate and fragment the administration  
16 of regulatory powers. The Commission's new regulations  
17 require all subbasin municipalities to adopt and implement  
18 an integrated resources plan before the Commission considers  
19 modifying and making more stringent its withdrawal limits.

20 In conclusion, the Delaware River Basin  
21 Commission staff believes that statewide ground water  
22 legislation is important for Pennsylvania and commends  
23 the sponsors of the bill for providing a good starting  
24 point for deliberations. The Commission staff and the  
25 Commission itself looks forward to continuing to work

1 with the Commonwealth of Pennsylvania, its counties  
2 and municipalities in cooperatively managing ground  
3 water throughout the Pennsylvania portion of the Delaware  
4 River Basin. Thank you.

5 CHAIRMAN REBER: Thank you, Mr. Featherstone.  
6 Do any members of the Committee have any specific questions.  
7 Representative Rubley.

8 REPRESENTATIVE RUBLEY: Thank you, Mr.  
9 Chairman. And thank you, Dr. Archer, and Mr. Featherstone  
10 for your testimony today.

11 BY REPRESENTATIVE RUBLEY:(To Dr. Archer)

12 Q One of my questions has to do with the  
13 section in the bill that has to do with the grants to  
14 municipalities. I understand how the grants would be  
15 very, very helpful because currently municipalities really  
16 aren't getting any help in this area. They can fairly  
17 readily do it to identify existing uses of water resources  
18 and estimate future trends in uses. I guess my concern  
19 is how are we going to be able to put a dollar limit  
20 on providing the technical assistance to establish or  
21 predicting the capacity of the watershed to provide  
22 adequate water supplies to meet anticipated demands?

23 This is, as far as I understand, a very complex area  
24 and you can get different people saying different things.

25 Does the Department have the expertise that could be

1 with the Commonwealth of Pennsylvania, its counties  
2 and municipalities in cooperatively managing ground  
3 water throughout the Pennsylvania portion of the Delaware  
4 River Basin. Thank you.

5 CHAIRMAN REBER: Thank you, Mr. Featherstone.  
6 Do any members of the Committee have any specific questions.  
7 Representative Rubley.

8 REPRESENTATIVE RUBLEY: Thank you, Mr.  
9 Chairman. And thank you, Dr. Archer, and Mr. Featherstone  
10 for your testimony today.

11 BY REPRESENTATIVE RUBLEY:(To Dr. Archer)

12 Q One of my questions has to do with the  
13 section in the bill that has to do with the grants to  
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20 on providing the technical assistance to establish or  
21 predicting the capacity of the watershed to provide  
22 adequate water supplies to meet anticipated demands?

23 This is, as far as I understand, a very complex area  
24 and you can get different people saying different things.

25 Does the Department have the expertise that could be

1 provided to people now or how would you go about handling  
2 this?

3 A I am not sure I understand the question.  
4 I mean are you talking about the expertise to allocate  
5 financial resources to do the planning or are you --

6 Q I am talking about the technical expertise  
7 that municipalities would need to predict what the capacity  
8 of the watershed is.

9 A Yes, I think we do even though it is  
10 not an exact science. We know for a fact that the water  
11 resources, being a nonrenewable resource, goes through  
12 a cycle. The problem is water leaving one area may  
13 fall in a different one. So allocating a fixed quantity  
14 on a basin basis is not precise or exact, but we do  
15 have the capability of estimating during different types  
16 of periods. Droughts, for example, what water will  
17 be available for the different competing uses.

18 REPRESENTATIVE RUBLEY: Thank you very  
19 much.

20 CHAIRMAN REBER: Representative Masland.

21 REPRESENTATIVE MASLAND: Thank you, Mr.  
22 Chairman.

23 BY REPRESENTATIVE MASLAND: (To Dr. Archer)

24 Q Dr. Archer, on the Susquehanna River  
25 Basin Commission's recent, I guess, rejection or tabling

1 of the proposal from the City of Baltimore, maybe you  
2 can enlighten me as to what the status of that is and  
3 really give me a regulatory lesson. How much control  
4 does the Commission have over that proposal? What enforcement  
5 authority do they have? I guess the same would hold  
6 true for anything in the Delaware River Basin.

7           A     Quoting specifically from the compact  
8 sections, the authority essentially says that the compact  
9 of DRBC and SRBC has the authority of resolving conflicting  
10 uses of the resource. Baltimore's proposal presents  
11 an issue that the Conowingo pool, it will preempt the  
12 existing users from participating in how the resource  
13 is apportioned during low flow periods. There are signif-  
14 icant environmental and social activities that are tied  
15 to the pool that if believed Baltimore, they could take  
16 the water without being sensitized to these other users.

17                     The Commission's position is that the  
18 resource is a shared resource and it is absolutely necessary  
19 that its management be in a comprehensive fashion so  
20 we can resolve conflicting uses.

21           Q     Most of the Conowingo pool I guess is  
22 really in Pennsylvania.

23           A     That is correct.

24           Q     But if it were in Maryland and the State  
25 of Maryland and Baltimore wanted to go ahead and do

1 something with those resources, you said that the Commission  
2 has the authority to resolve conflict. What if the State  
3 of Maryland and the City of Baltimore decided they didn't  
4 like the way you wanted to resolve it and they were  
5 going to have access to that water one way or the other?

6 A Then we would end up probably in court.

7 Q That is what I am getting to. I mean,  
8 you don't really have, there is no real teeth other  
9 than ultimately going to court.

10 A No, and it is a deferring legal opinion.  
11 We think the compact is fairly clear and gives the authority  
12 to the compact, but we can always be challenged. I  
13 guess Baltimore may. But you also need to consider  
14 downstream users like the bay, for example, the benefits  
15 from the flow in the Susquehanna, and just Maryland,  
16 the regulatory agency and Baltimore making a decision  
17 that affects downstream users of the resources could  
18 present a conflict.

19 REPRESENTATIVE MASLAND: Thank you.

20 CHAIRMAN REBER: Chairman George.

21 BY REPRESENTATIVE GEORGE:

22 Q Mr. Archer, just a couple of quick notes  
23 to see whether you are in agreement. These dam encroachments  
24 that we built in the last 10 or 20 years would you agree  
25 that at times they are responsible for the growth of

1 our streams and the material that has grown and shut  
2 these streams down because they don't let the free flow  
3 of water? Would you be in agreement with that?

4 A Are these encroachments what I call flood  
5 protection devices?

6 Q Well, we know they are protective devices,  
7 but we also know that the water doesn't emit from the  
8 heavens as it usually does in many cases. Since you  
9 are a doctor, you probably know how to spell the word  
10 drought and that is what we have.

11 Now number two, does the Department have  
12 the ability to control the draw down in a given stream  
13 that where public usage is brought about does the Depart-  
14 ment have a percentage where they insist that only so  
15 much be drawn down from that stream?

16 A The only authority the department has  
17 is on surface water withdrawals for public water supply  
18 consumption.

19 Q So if in fact a public water supply were  
20 as such controlled by an authority that has nothing  
21 to do with a municipality such as a county and you can  
22 see that the water no longer is coming over the breast  
23 of the dam, you can almost tell that the draw down  
24 or the usage because of the shortage of water that has  
25 been going into the ground table, but they are using

1 maybe a greater percentage than what was deemed to be  
2 safe for the cleansing of the streams. Will this legislation,  
3 or can something be put in this legislation, to protect  
4 that stream quality. And how can you do that if in  
5 fact the usage already exemplifies and is above and  
6 beyond what that stream or those springs that feed that  
7 stream should be capable of caring for? What do we  
8 do then? The gentleman in his dissertation said that  
9 we should have cooperation. But in my opinion I think  
10 he said that the local government shouldn't have the  
11 complete say over these things and you both mentioned  
12 what had taken place over in State College. I mean,  
13 why do we need another bureauacracy and why do we want  
14 everybody to be a part of it, and at the end of the disser-  
15 tation, we don't want everybody to be a part of the deci-  
16 sion making? You are grinning, but I'd like your answer  
17 rather than a little bit of a grin on that.

18 A I will answer, Representative George.

19 I am smiling because it is very clear from both testimonies  
20 that it is critically important the local government will  
21 control land use and land use planning and be a participant  
22 in how the resource is planned for; very important.

23 Q So you are willing to give local government  
24 that authority?

25 A Correct.

1 Q And you are willing to let their authority  
2 stand?

3 A That is correct. And we are talking  
4 both water resources planning.

5 Q We are talking about that their authority  
6 will precede any water authority or any other governmental  
7 authority by the protection of that water supply. In  
8 other words if a municipality is located and down the  
9 road 20 mile there is a water authority that is utilizing  
10 through the eminent domain procedure, are we going to  
11 give that community the opportunity to sanction or limit  
12 the draw down? That is what I am asking.

13 A And I will underscore the planning aspect.  
14 Local governments have an important role to play in  
15 how the resource is planned for. If you are talking  
16 about regulating takings or withdrawals from the resource,  
17 it is important that the resource be looked at in a  
18 comprehensive nature and that one or two individuals  
19 don't preempt the existing uses by other users. Which  
20 means that it needs a comprehensive regulatory program  
21 and not a fragmented one.

22 REPRESENTATIVE GEORGE: Thank you.

23 CHAIRMAN REBER: Thank you, Chairman  
24 George. Representative Schroder.

25 REPRESENTATIVE SCHRODER: Thank you,

1 Mr. Chairman.

2 BY REPRESENTATIVE SCHRODER:(To Mr. Feathersone)

3 Q A couple of questions for Mr. Featherstone.  
4 First of all, thank you for some of your suggestions  
5 in your testimony, particularly about the funding issues  
6 that you have raised. I will definitely take that into  
7 consideration and review that.

8 The first question is when did the new  
9 regulations that you just put into effect for the Nesham-  
10 iny Basin in the Southeast Ground Water Protected Area,  
11 when will that be extended to the rest of the Southeast  
12 Ground Water Protected Area?

13 A I had hoped that they would have been  
14 already in place about three or four months ago. The  
15 technical reason why, we have two different computer  
16 systems between the U.S. Geological Survey and our system.  
17 We use one and they use the other. The U.S.G.S. program,  
18 their information is in the wrong system and it has  
19 taken us two to three months to develop capability.  
20 But I would expect that as soon as we get it, we are going  
21 to go directly to public hearing and publish it. So  
22 my best guess would be two, four months at the latest.

23 Q Okay, thank you. I am certainly aware  
24 of the court cases that you mention in your testimony  
25 and I have kicked this around with any number of people.

1 But isn't part of the reasoning behind those court cases  
2 that municipalities can't regulate withdrawal of ground-  
3 water. Basically because the state has never granted  
4 them the power to do that and therefore the Delaware  
5 River Basin Commission is really the only game in town.  
6 Isn't that part of what is the reason behind these cases?  
7 Do you have an opinion on that?

8 A Well, I certainly don't have a legal  
9 opinion because I am not a lawyer. But I think local  
10 regulation of groundwater withdrawals is a rarity in  
11 the country. I think almost all regulation of withdrawals  
12 is being done at the state or some sort of a compact  
13 type of arrangement. So, local regulation is very rare.  
14 I think there is a few districts in California that  
15 do it and a few other places around the country, but  
16 they are the exception rather than the rule.

17 I think the issues that I raise in my  
18 testimony, I think are the reasons why most people are  
19 looking for consistency in the application and looking  
20 at, as Dr. Archer has pointed out, a more comprehensive  
21 approach to management. And if we allow each municipality  
22 to regulate groundwater withdrawals, the system would  
23 be so utterly fragmented it would be difficult to come  
24 up with a uniform comprehensive policy.

25 Q Well, I understand your point, I understand

1 your point on that. I think there are arguments the  
2 other way too. For the sake of time I won't get into  
3 it right now. But with regards to the issue at hand,  
4 these court cases, it seems to me that part of what  
5 is behind this is the fact that the state has never  
6 either regulated withdrawal of water on a statewide  
7 basis itself or given its local government units the  
8 power to do so. You wouldn't suggest, I have heard  
9 it is now the position of the Delaware River Basin Commission  
10 that we have ~~ceded~~ ~~our~~ sovereignty over groundwater  
11 and surface water to the DRBC by virtue of joining the  
12 compact.

13 A No, clearly not. I mean, our position  
14 all along since I have been there, which is 17 years,  
15 is that we have always supported the Commonwealth taking  
16 a lead similar to our sister states, Delaware and Jersey,  
17 taking a lead on setting up statewide permit programs  
18 in allocating water.

19 So, I think what our regulations do,  
20 which is they are very unique, it is not being done  
21 in the country at all, is trying to bring the local  
22 planning into the picture and I would think that another  
23 piece that would be really helpful would be to have  
24 statewide involvement and statewide permitting. I think  
25 that would be a real good package.

1 Q And just one last question, is there  
2 any thought or any discussion at the DRBC to extend  
3 that concept beyond the Southeast Ground Water Protected  
4 area? I agree with you that this is moving in the right  
5 direction. It only applies to a small part of the state.

6 A Yes, there has been some talk of it but  
7 it has not progressed beyond that level. Just on that,  
8 I think this concept and our approach is so new that  
9 we want to be able to walk before we run. I think this  
10 is going to work out real well if it does. I think  
11 other people will jump on the bandwagon.

12 REPRESENTATIVE SCHRODER: Thank you.

13 CHAIRMAN REBER: Representative McGill.

14 REPRESENTATIVE MCGILL: Thank you, Mr.  
15 Chairman. Representative Schroder has hit on the question  
16 I was going to ask. So thank you very much.

17 BY CHAIRMAN REBER:

18 Q One last question, Dr. Archer, would  
19 you concur that the fact that Pennsylvania law, when  
20 I say Pennsylvania law, specifically the Municipalities  
21 Planning Code that you allude to in your testimony, specifically  
22 doesn't mandate, obviously, in giving that mandate authority  
23 to municipalities. It does in fact request them to consider  
24 water resources in their overall planning, in their  
25 permit issuance and their review of subdivisions and

1 land development plans pursuant to the Municipalities  
2 Planning Code. Isn't that the real paradox that we  
3 have here that there isn't real authority there, but  
4 yet we recognize the need for some consideration and  
5 then the question being can you do it on a local, individual,  
6 township by township, borough by borough basis or does  
7 it have to be done on a much more regionalized watershed  
8 type basis? Isn't that the real problem we always seem  
9 to have when we grapple with this issue?

10 A Yes, it is.

11 Q That is a fair statement still today?

12 A Yes. One other clarifying point, the Benner  
13 Township case, now that is related to the Susquehanna  
14 River Basin Compact; is that correct?

15 A That is correct.

16 Q Did the court address whether that same  
17 logic would apply if there was a case with the DRBC?  
18 Was there any detriment to that effect?

19 A No, there wasn't.

20 Q So, at least for the time being that  
21 would apply only to water withdrawals within the Susquehanna  
22 Basin; correct?

23 A Well, the decision was based on the compact.  
24 It said the compact gave their authority to SRBC. In  
25 terms of DRBC their knowledge is similar.

1 Q The compacts are similar to that extent?

2 A That is correct.

3 CHAIRMAN REBER: Thank you very much,  
4 gentlemen. I appreciate your time.

5 At this time we are running very close  
6 to our timeframe. I would like to ask if Sean O'Neill  
7 and Charles Jacobs could both come to the panel table  
8 and proceed with, hopefully, somewhat summarization,  
9 if at all possible, of their prepared testimony for  
10 time sake and then we are going to get into some ques-  
11 tions. Mr. O'Neill, if you are ready you can proceed.

12 MR. O'NEILL: Good morning, my name is  
13 Sean O'Neill. I am a lawyer in the firm of Lentz, Cantor  
14 & Massey in Malvern, Chester County, Pennsylvania.  
15 I am a municipal solicitor in South Coventry Township  
16 in Chester County and in Concord Township, Delaware  
17 County. I am a real estate lawyer and a Planning Commis-  
18 sioner in West Pikeland Township.

19 I want to thank the Chairman and the  
20 committee for the opportunity to appear today to testify  
21 in support of the proposed Municipal Groundwater Resources  
22 Planning Act.

23 The need for legislation and regulatory  
24 reform in the area of groundwater planning and regulation  
25 has only too recently become glaringly apparent to those

1 of us involved in matters of zoning and land use regulation.

2 In this respect, unfortunately, the law has been lagging  
3 far behind the body of scientific knowledge and the  
4 work that has been done over the last two or three decades  
5 by those who have recognized the need for a comprehensive  
6 system of groundwater regulation.

7 As early as 1976 one of today's speakers,  
8 Mr. Weston, and his colleagues studying the state of  
9 water law in Pennsylvania concluded that the common  
10 law focus was on allowing landowners to extract as much  
11 water as possible and generally on a first come, first  
12 served basis. Mr. Weston then wrote, in the absence  
13 of reason, water law and policy, citizens are confronted  
14 by a babble of doctrine, rules, distinctions and exceptions.  
15 A comprehensive statewide system is necessary now, as  
16 then, to allow for protection of the groundwater supply  
17 as a sustainable resource, not only for human development  
18 but for the management of stream base flow, wetlands,  
19 soil fertility and aquatic and other wildlife.

20 Currently, there is a gaping hole in  
21 the existing regulatory framework for comprehensive  
22 groundwater management. In South Coventry Township  
23 and in the Northern Federation of Chester County municipal-  
24 ities in which it sits, the need for groundwater supply  
25 regulation has been highlighted by the activities of

1 the number of spring water bottling enterprises, both  
2 small and large, operating in the area. While House  
3 Bill 2625 does not have as its sole or primary focus  
4 a single industry such as spring water bottlers, that  
5 industry does provide a clear example of the type of  
6 consumptive use that, when allowed to extract water  
7 on a first come, first serve basis, can threaten existing  
8 and projected future water supplies needed both for  
9 human development and also directly affect the environment.

10 In South Coventry Township, a Perrier  
11 Water Company subsidiary owns and operates a spring  
12 water collection facility on 60 acres of ground. It  
13 happens to sit next to 200 acres of Township-owned ground  
14 set aside for woodland and groundwater conservation  
15 purposes. The Perrier property had historically been  
16 used by Perrier's predecessor for spring water collection  
17 through a catch basin. Perrier and its predecessor's  
18 spring water collection has increased over many years  
19 and it now collects about 40,000 gallons per day on  
20 an annual basis and reportedly more than twice that  
21 on a peak usage basis. Perrier has drilled a well,  
22 or what they refer to as a bore hole, to extract up  
23 to 95,000 gallons per day on a 30 day basis, and they  
24 have applied to the DEP for a new or modified permit  
25 under the Safe Water Drinking Act and also to the Delaware

1 River Basin Commission for groundwater withdrawal permit  
2 for this purpose. A study of the proposed production  
3 well by a township retained consultant, hydrogeologist,  
4 indicates that the proposed extraction for off-site  
5 transport and bottling may, at those levels, use approxi-  
6 mately 44 percent of the groundwater within the immediate  
7 recharge area available for possible municipal use on  
8 the adjacent municipally owned conservation land, a  
9 supply which would otherwise be available to serve up  
10 to 900 single-family homes in the Township. Moreover,  
11 it would approximately equal, in amount, the entire  
12 base flow of the adjacent Pigeon Creek tributary in  
13 a 10-year drought condition based on a study done by  
14 the Green Valleys Association.

15 South Coventry Township is in some ways  
16 fortunate in that it finds itself in the "groundwater  
17 protected area" of southeastern Pennsylvania where the  
18 DRBC does regulate groundwater extraction at levels  
19 of 10,000 gallons per day or more. Therefore, Perrier  
20 will have to obtain a permit from the DRBC for its proposed  
21 95,000 gallons per day extractive use. However, the  
22 South Coventry example points up some of the glaring  
23 deficiencies in the existing management framework.

24 Under existing statutes, the DEP does  
25 not directly regulate the amount of groundwater that

1 can be taken. In terms of volumes of use, DEP only  
2 regulates public water suppliers utilizing surface water  
3 sources under the Water Rights Act. While DEP has recently  
4 begun to review the environmental impact of excessive  
5 groundwater withdrawals in the context of issuing permits  
6 under the Safe Drinking Water Act (due to ongoing litigation  
7 in this area), at the current time this is being done  
8 largely on an ad hoc basis through use of its regulatory  
9 jurisdiction under the Clean Streams law and other environ-  
10 mental statutes, but without a regulatory framework  
11 for comprehensive or uniform limits on the amount of  
12 groundwater taken.

13                   Moreover, but for the fact that South  
14 Coventry Township is located within the groundwater  
15 protected area of Pennsylvania, Perrier's proposed extraction  
16 of nearly 100,000 gallons per day would not even be  
17 reviewed by the Basin Commission. For example, the  
18 same use in the directly adjoining township of West  
19 Vincent or in my nearby township of West Pikeland would  
20 require no permit from the Basin Commission since they  
21 review generally only withdrawals of 100,000 gallons  
22 per day more. In fact, only about one-third of the  
23 municipalities in Chester County are included within  
24 the special groundwater protected area.

25                   Moreover, the entire western one-third

1 of the Commonwealth lies outside of the regulatory juris-  
2 diction of either the Delaware River Basin Commission  
3 or the Susquehanna River Basin Commission.

4 The result is that, notwithstanding this  
5 trio of Commonwealth court cases suggesting that the  
6 subject of the quantity of withdrawals has been assigned  
7 to the Interstate Basin Commissions, the truth is that  
8 these commissions don't operate in one-third of the  
9 state and in the other two-thirds regulate only the  
10 very large volume user, leaving unregulated the cumulative  
11 impact posed by the ever mounting demands on groundwater  
12 supplies by more typical forms of residential, commercial  
13 and industrial users, and by entirely consumptive uses  
14 such as spring water bottling operations drawing at  
15 less than the 100,000 gallon per day threshold. In  
16 fact, the cases that have dealt with the preemption  
17 at the Commonwealth Court level have involved users  
18 drawing upwards of four million gallons per day. So,  
19 it is the everyday development that has been totally  
20 ignored at the current time. Again, while DEP may,  
21 on a case-by-case basis assess the environmental impact  
22 and, from that perspective, ~~evaluate~~ the "safe yield"  
23 of a proposed aquifer when it issues permits under the  
24 Safe Drinking Water Act, its primary focus on that Act  
25 is on water quality, not quantity.

1 House Bill 2625 is presently needed to  
2 clarify and supplement the already existing regulatory  
3 framework under the Municipalities Planning Code.

4 There already exists basis for groundwater  
5 withdrawal regulations under the various municipal enabling  
6 statutes, but more importantly, under the Municipalities  
7 Planning Code. By clarifying and supplementing that  
8 existing authority, House Bill 2625 vastly improves  
9 that statute as a platform for meaningful and comprehensive  
10 groundwater withdrawal regulation on a watershed basis.

11 In the existing MPC local governments  
12 are directed in a variety of provisions to plan and zone  
13 in a way to protect groundwater supplies and aquifers.  
14 Under Section 209.1, a local planning agency is empowered  
15 to prepare a water survey. Under 301(b), the municipal  
16 comprehensive plan is to address a plan for the reliable  
17 supply of water, considering current and future water  
18 resources, availability, uses and limitations. Under  
19 Section 601, the governing body is to enact a zoning  
20 ordinance to implement such a comprehensive plan. Under  
21 Section 603(b), zoning ordinances may, more specifically,  
22 "...regulate: (1) uses of land, water courses and other  
23 bodies of water..." and (5) the protection and preservaion  
24 of natural resources." 603(d) says that zoning ordinances  
25 may include provisions regulating a variety of development

1 to ensure the availability of "reliable, safe and adequate  
2 water supplies to support the intended land uses within  
3 the capacity of available water resources." Under Section  
4 604(1), zoning ordinances are to be designed to protect  
5 a safe, reliable and adequate water supply for domestic,  
6 commercial, agricultural or industrial use..as well  
7 as preservation of the natural values in the environ-  
8 ment..and wetlands, aquifers and floodplains. So, it  
9 is hard to imagine that it was not the intent of the  
10 Legislature with that panoply of provisions in the NPC  
11 to authorize municipalities to plan for and regulate  
12 groundwater consumption.

13                   It has been my experience in Chester  
14 County that well ordinances directly regulating volumes  
15 of water withdrawal are scarce to nonexistent and so  
16 far have not been used in a meaningful way to plan long-term  
17 demands on local aquifers taking into account projected  
18 future uses. The focus of zoning ordinances developed  
19 under the MPC has largely been on the type of land use  
20 rather than on the amount of water use in any meaningful  
21 way. However, local regulations need to work to protect  
22 aquifers and streams from diminution and degradation  
23 in the same way that they are already commonly designed  
24 to protect floodplains, steep slopes, and stormwater  
25 runoff. That is, they must have general application

1 regardless of artificial zoning district lines.

2           While the current MPC already does contain  
3 provisions at Article 11 allowing for the establishment  
4 of joint municipal planning commissions and the adoption  
5 of joint municipal comprehensive plans and zoning ordinances,  
6 those provision have not so far been used in a meaningful  
7 way to address the more traditional subjects of land  
8 use regulations under municipal zoning ordinances. However,  
9 the municipalities of the Northern Federation of Chester  
10 County Municipalities, and it is my understanding also  
11 several municipalities in Bucks County, have expressed  
12 a strong desire to work together on watershed-wide ground  
13 water management through just such a vehicle as IWRP  
14 specifically created by House Bill 2625. By laying  
15 out the detailed contents of an integrated water resources  
16 plan under Chapter 3 of the proposed legislation and  
17 by requiring that such a plan be prepared by all contiguous  
18 municipalities within or partially within the watershed.  
19 The legislation provides a framework for meaningful  
20 groundwater management on a coordinated watershed-wide  
21 basis. By requiring that such a plan be subject to  
22 review by the Department of Environmental Protection,  
23 the bill ensures the consistency of any such plan with  
24 other integrated water resource plans, as well as the  
25 state water plan, and where applicable, the interstate

1 water commission having jurisdiction.

2           Moreover, and based on the discussion  
3 that was just had, the proposed legislation does the  
4 important task of removing the cloud of the "preemption"  
5 question which has obscured the perspective of local  
6 governmental bodies and their consultants and advisors.  
7 Three Commonwealth Court cases, taken together, state  
8 that local regulation over groundwater withdrawal is  
9 preempted by the Susquehanna River and Delaware River  
10 Basin Compacts in the areas and to the extent that those  
11 basin commissions regulate. In this regard, it should  
12 be stressed that the Half Moon Township case, relied  
13 on the more recent Benner case, found preemption to  
14 exist, due, in that case, to the clear intention evidenced  
15 by the River Basin Compact and regulations thereunder  
16 to regulate "over a certain volume," the words used  
17 by the court. In none of these cases have the court  
18 suggested that regulatory authority does not already  
19 exist under the MPC and other statutes for regulation  
20 of groundwater withdrawals are less than the very substantial  
21 threshold volumes of use that the interstate commissions  
22 regulate or in the geographic areas of the Commonwealth  
23 where they do not operate.

24           Moreover, notwithstanding these Commonwealth  
25 Court holdings, there is a real question as to whether

1 the legislature intended to preempt local regulation  
2 when it entered into these compacts and whether the  
3 interstate commissions themselves have even regarded  
4 their authority as preemptive. In one of its adjudications  
5 involving the Wissahickon Spring Water Company, the  
6 Delaware River Basin Commission state:

7 "Unquestionably, DRBC's Compact vests  
8 broad authority with DRBC. The exercise of such powers  
9 may lead to the preemption of other local or state regulatory  
10 authority. With regard to local zoning and other state  
11 regulatory actions, however, unless DRBC so determines,  
12 its actions do not preempt local authority except to  
13 the extent that such actions would in fact contradict  
14 or be incompatible with DRBC. As has been noted, DRBC,  
15 in establishing regulatory standards, specifically preserves  
16 the right of the signatory parties to impose more stringent  
17 standards."

18 The DRBC, in that same case, stressed  
19 that in the Benner and Half Moon Township cases, both  
20 involving only the Susquehanna River Basin Commission,  
21 that commission was not even a party to those proceedings.

22 In fact, in the recent amendments to  
23 the Delaware River Basin Commission's groundwater protect  
24 area regulations, there is included a specific regulation,  
25 already discussed today, which allows the DRBC's withdrawal

1 limits to be modified upon application by the appropriate  
2 governmental bodies in order ..."to correspond with  
3 more stringent requirements and integrated resource  
4 plans adopted and implemented by all municipalities  
5 within a "potentially stressed" subbasin..., thereby  
6 stating its intent to consider and even incorporate  
7 local integrated resource plans in the review and revision  
8 of its own withdrawal limits. House Bill 2625 notably  
9 lists as the contents of a proposed integrated water  
10 resources plan virtually of the same elements that Delaware  
11 River Basin Commission has listed as required contents  
12 of a municipal integrated resources plan for purposes  
13 of modifying that commission's own withdrawal limits.

14           Given the substantial questions raised  
15 by the Commonwealth Court's "preemption" holdings, despite  
16 the relatively narrow focus of those cases, the bill  
17 proposed by Representative Schroder and others serves  
18 a very important purpose in clarifying the legislature's  
19 intent to continue to allow local municipal bodies to  
20 plan for and regulate groundwater resources within their  
21 communities. It is no different than the state already  
22 does with respect to floodplain management, storm water  
23 management and sewage facilities management for that  
24 matter where local bodies are directed to undertake  
25 their own planning through the state statute and through

1 the other side of the Pennsylvania DEP and direct it  
2 to administer those areas of local planning in a coordin-  
3 ated way under and subject to state supervision.

4 For all these reasons, South Coventry  
5 Township, for itself and as a member of the Northern  
6 Federation of Chester County Municipalities, has strongly  
7 supported the adoption of House Bill 2625.

8 We have added only two editorial comments  
9 to our review of the bill. In Section 302(a) there  
10 is language allowing for preparation of a water resources  
11 plan by a joint municipal planning commission "composed  
12 of members from" all governing bodies located within  
13 the watershed. I believe the reference should be to  
14 a joint municipal planning commission "established by"  
15 members of all governing bodies within the watershed.

16 Since those municipal planning commissions do not neces-  
17 sarily have to consist of the supervisors of the applicant  
18 municipality.

19 In addition, there is a reference in  
20 Section 305(d) of the bill which directs the DEP in  
21 reviewing a local water resources plan to solicit input  
22 from the Delaware River Basin Commission. I believe  
23 the reference should also include seeking input from  
24 the Susquehanna River Basin Commission.

25 In closing, I would like to thank the

1 Committee for taking the time to listen today and to  
2 urge the Committee to move this legislation forward.

3 CHAIRMAN REBER: Thank you very much,  
4 Mr. O'Neill. I deeply appreciate the annotated analysis  
5 that you provided for us and I am sure it will provide  
6 to the proponents of the legislation as well as possibly  
7 opponents of the legislation some food for thought and  
8 it will certainly be of assistance to our technical  
9 staff, legal counsel in reviewing the bill for modifications  
10 in part that you suggest.

11 That being said, Mr. Jacob of the Federation  
12 of Northern Chester County Communities. If you present  
13 your view on this, I would appreciate it and then we  
14 will ask both of you to stand for some questions. You  
15 may proceed.

16 MR. JACOB: Good morning distinguished  
17 members of the House Environmental Resources and Energy  
18 Committee.

19 My name is Charles Jacob. I am Chairman  
20 of the Board of Supervisors of Warwick Township, Chester  
21 County. Also, I presently serve as the Chairman of  
22 the Federation of Northern Chester County Communities,  
23 a nine municipal regional planning group in Chester  
24 County, and as such, I appreciate the opportunity to  
25 testify before this Committee on behalf of the Northern

1 Federation as it is commonly called on HB 2625 on Water  
2 Resources Planning. The Northern Federation appreciates  
3 the effort Representatives Schroder, Hennessey, Reber  
4 and other House Members have put into this much needed  
5 legislation.

6 Before commenting on specific sections  
7 of HB 2625, I need to briefly highlight the northern  
8 Federation's involvement with water resources planning  
9 in Northern Chester County The Northern Federation  
10 was formed in 1974 with Warwick, South Coventry, East  
11 Vincent, West Vincent and East Pikeland Townships as  
12 original members. It is presently the oldest multi-municipal  
13 planning group in Chester County and is composed of  
14 elected officials, planning commission members, municipal  
15 managers and citizens that provide a means for its member  
16 municipalities to discuss and address issues that transcend  
17 municipal boundaries. It meets once a month. The Northern  
18 Federation now has nine municipalities and has throughout  
19 its existence concentrated largely on the water resources  
20 of the region. The Federation of Northern Chester County  
21 Communities is not a joint regional planning commission  
22 as outlined in Article VIII of the MPC but rather a  
23 **voluntary** multi-municipal planning group or federation.  
24 It was instrumental in developing the French Creek Scenic  
25 River Management Guidelines in 1984 as well as being

1 designated by Act 97 of 1982 as the local coordinating  
2 body for the implementation of the French Creek Scenic  
3 Rivers Act. The Northern Federation completed a Water  
4 Resources Management Study in 1988; a Regional Wastewater  
5 Facilities Plan, Phase I and II in 1990; of which I  
6 may add both municipalities installed into an upgraded  
7 individual 537 Plan. Also, a Surface Water Runoff Study  
8 in 1991 and currently has combined efforts in the last  
9 four years with the Green Valleys Association on developing  
10 and implementing a Sustainable Watershed Management  
11 Program for the French Creek; Pickering Creek and Pigeon  
12 Creek and other watersheds in Northern Chester County.  
13 Water resource planning in Northern Chester County is  
14 extremely critical as much of the Federation Area is  
15 within a special groundwater protected area as designated  
16 by the Delaware River Basin Commission. Currently,  
17 there are four large water redrawing applications before  
18 member municipalities of the Northern Federation which  
19 could impose a major impact to the sensitive groundwater  
20 resources of the area, especially when future water  
21 budgets are bound to be stretched to critical limits  
22 due to the rapid growth Chester is experiencing currently.  
23 Northern Chester County needs this legislation now  
24 before it is too late. With this in mind, the Federation  
25 of Northern Chester County Communities strongly supports

1 House Bill 2625 but with a further refinement to specific  
2 Sections.

3           The backbone of House Bill 2625 refers  
4 back to the Municipalities Planning Code specifically  
5 in many Sections to Article VIII. Care has to be taken  
6 here as Article VIII of the MPC requires immediate repeal  
7 of all zoning ordinances whether they be involving water  
8 resources or land uses. And this is under MPC Section  
9 802 and 1104(a). Instead of relying on a joint planning  
10 commission which by the MPC refers to joint zoning ordinances,  
11 a new definition should be considered and introduced  
12 in House Bill 2625; namely, "Joint Integrated Water  
13 Resources Commission or Planning Commission" which would  
14 follow the basic procedures of Article VIII and XI in  
15 developing an Integrated Water Resources Plan specifically  
16 only for that plan, but would not require total repeal  
17 on other individual municipal land use ordinances.  
18 The Joint Integrated Water Resources Commission in defini-  
19 tion should include existing established regional planning  
20 groups or federations such as the Northern Federation.  
21 Under Section 102 of House Bill 2625, the definition  
22 should be added and all references to Joint Planning  
23 Commission in the rest of House Bill 2625 should be  
24 changed to "Joint Integrated Water Resources Commission  
25 or Planning Commission."

1                   The definition under Section 102 "Watershed"  
2 (2) should include the Joint Integrated Water Resources  
3 Commission with the River Basin Commission and Department  
4 of Environmental Protection in having a role in designating  
5 a subbasin. This section is in Houe Bill 2625, page  
6 2, line 17 through 19.

7                   Chapter 3 Section 301(a) - Powers of  
8 Joint Commission -- should be revised by replacing a  
9 joint-municipal planning commission with a Joint Integrated  
10 Water Resources Planning Commission. This is on page  
11 3, lines 24 through 25 and 28 in House Bill 2625.

12 The powers under Section 302(a) 1 through 9 will provide  
13 the planning power and tools for regional groups like  
14 the Northern Federation to better manage our valuable  
15 water resources.

16                   Section 303, Plan Provision Subsection  
17 (a) General Rule - this should be expanded to say --  
18 An Integrated Water Resources Plan may be under part  
19 of a joint municipal zoning ordinance (or an individual  
20 municipal zoning ordinance if the municipality is a member  
21 of the Joint Integrated Water Resources Commission of  
22 the watershed) containing and further on through the  
23 text of that section. Now I am referring to page 5,  
24 line 22 of House Bill 2625.

25                   Section 305 - Review by department -

1 Subsection (d) the last sentence should read "The department  
2 may seek review and input from The River Basin Commission  
3 of the designated watershed or subbasin as appropriate.

4 The word "Delaware" should be deleted. This is on page  
5 7, line 10 and 11. And the reason I put this in there,  
6 there ~~are~~ other basins within the State of Pennsylvania;  
7 namely, Susquehanna Basin and there is certainly basins  
8 in the western segments too that should be considered  
9 in this language.

10 Section 308 - Action by department under  
11 water laws. This section should include reference to  
12 Pennsylvania Clean Streams Laws and consider the Stream  
13 Quality Designation like hard value or exceptional value.  
14 And I refer to page 8, line 11 as an extension of that.

15 Section 309 - Grants and assistance.

16 Grants and assistance should also be provided to Joint  
17 Integrated Water Resources Planning Commissions or Federa-  
18 tions. Because it is these bodies that are coordinating  
19 the effort to develop some type of management to the  
20 watersheds. Because watersheds, as everyone knows,  
21 transcends from municipal boundaries and must include  
22 all the municipalities within that watershed or subwatershed.

23 Section 310 should be changed to: Application  
24 of Joint Integrated Water Resources Zoning Provisions.

25 The other Sections of House Bill 2625

1 that I have not commented on appear to be satisfactory.

2 In summary, I would urge the legislature  
3 to consider the specific changes to House Bill 2625  
4 just indicated. With these considerations, this bill  
5 would provide the critical tools municipalities need  
6 to be able to better manage their water resources and  
7 be able to budget that resource for future development  
8 needs as well as provide the necessary protection of  
9 our water resources including the groundwater, streams  
10 and wetlands.

11 Thank you for the opportunity to present  
12 a few views from the Northern Federation. I will do  
13 my best to answer any questions you may have at this  
14 time.

15 CHAIRMAN REBER: Thank you very much,  
16 Mr. Jacob. Do any members of the Committee have any  
17 questions for this panel? Representative Rubley.

18 REPRESENTATIVE RUBLEY: Thank you, Mr.  
19 Chairman, and thank you, gentlemen for your comprehensive  
20 testimony.

21 BY REPRESENTATIVE RUBLEY: (To Mr. Jacob)

22 Q My only question, having heard the testimony  
23 of Mr. Featherstone from the DRBC, his position seems  
24 to be quite strong that we need a comprehensive source  
25 of regulation not fragmented. Whereas, your position,

1 and they are even looking at statewide planning. Your  
2 position is that we really have to break it down on  
3 a multi-municipal basis. Is that not correct and how  
4 do you feel about giving the state the responsibility  
5 for this versus the joint commissions?

6 A Do you want me to speak first on this?

7 Q Whichever.

8 A The feeling is here the state can have  
9 a major role in this, but bear in mind when you look  
10 at the entire basin commission or subregion of Pennsylvania  
11 when it comes down to individual watersheds and subwater-  
12 sheds, individual municipalities and the regional planning  
13 groups like Northern Federation know much better what  
14 exists there and what the issues are than some higher  
15 being and it has a direct bearing on our local residents,  
16 etc. If we have a small subwatershed that has real  
17 problems and people are seeing that their wells are  
18 starting to dry up and they have to drill more wells,  
19 etc., the municipality finds that out first. Because  
20 we are right with the local people and consequently  
21 I think there needs<sup>s</sup> be direct coordination with the  
22 local municipality and municipalities within the region  
23 to make sense out of any integrated water resources  
24 planning.

25 MR. O'NEILL: I would share Mr. Jacob's

1 view of that. The problem is that currently the state  
2 does not have a comprehensive system. It has very limited  
3 pieces of the system that it looks at and, in general,  
4 in terms of the amount of groundwater take-in, it looks  
5 only at very large withdrawals of groundwater except  
6 in specific areas, the protected area. They are talking  
7 about now expanding that to perhaps other areas of the  
8 state. But already you are talking about two different  
9 commissions to begin with as well as the other commissions  
10 that are operating in the western part of the state  
11 that were discussed earlier. So the state system that  
12 exists is not a comprehensive system. It is fragmented  
13 to begin with. It doesn't focus on true watershed manage-  
14 ment. It focuses on individual applications for very  
15 large withdrawals. The benefit of this legislation  
16 enables local townships, through coordinated effort,  
17 to look at a watershed and to plan for that watershed.  
18 That just simply isn't going to happen under the statutes  
19 that are in place currently.

20 REPRESENTATIVE RUBLEY: Thank you very  
21 much.

22 CHAIRMAN REBER: Thank you. Representative  
23 Schroder.

24 REPRESENTATIVE SCHRODER: No questions,  
25 Mr. Chairman. I just want to thank both Charlie and

1 Sean for your testimony, your comprehensive analysis  
2 and for your suggestions for additional revisions. They  
3 will be taken into account and consideration. Thank  
4 you.

5 MR. O'NEILL: Thank you.

6 CHAIRMAN REBER: Representative McGill.

7 BY REPRESENTATIVE MCGILL:(To Mr. O'Neill)

8 Q Thank you, Mr. Chairman. I think from  
9 hearing this testimony, we are back to one of the problems  
10 that you stated when you wrapped up with the previous  
11 two speakers, and that is, the federation seems to have,  
12 or I guess the concern would be what if the federation  
13 or one of the groups in the federation doesn't go into  
14 agreement on this piece of legislation that is passed  
15 and that poses some problems. So I think at this point  
16 we have DEP, along with the Delaware River Basin Commission,  
17 the Federation and the local municipality all looking  
18 for something out of one piece of legislation that drags  
19 it all back to an individual municipality's decision  
20 on how that groundwater is used.

21 So, I am a little bit up in the air.

22 I think we are at, again, at this tug of war where  
23 individual groups want control, but again when we are  
24 dealing with watersheds they don't know boundaries,  
25 at least municipal boundaries. They have their own.

1       So we're still not focused. And from the four pieces  
2 of testimony we have gone in relatively different directions  
3 again.

4               A       Well, I think under the bill as drafted,  
5 there is no integrated water resources plan unless it  
6 is prepared by a joint municipal planning commission  
7 of all municipalities within a watershed. True, as  
8 currently drafted, not all those municipalities need  
9 adopt it, but it cannot ever move forward unless there  
10 is a coordinated planning effort by all municipalities  
11 within a watershed.

12               So I think that the vital first step  
13 is there. There is another bill introduced by Senator  
14 Gerlach in which he would have required 75 percent of  
15 all municipalities within the watershed to adopt. Frank-  
16 ly, from our perspective, that works for us because  
17 we are convinced that this group of townships working  
18 together could meet that percentage requirement. I  
19 am not sure that would happen uniformly throughout the  
20 state and I would hate to think that a coordinated planning  
21 effort would never get off the ground because there  
22 was a hold-out municipality.

23               Q       Well then the question is do you think  
24 the state directed plan that would force the watersheds  
25 to work and come up with something similar to this would

1 be the way to go? In other words, we would direct and  
2 then the watershed would have to get together and come  
3 up with a plan on how to manage those watersheds and  
4 we would be overseers? Do you think that that would  
5 be a better deal?

6 A I think that is certainly an idea worth  
7 considering in those instances where there is not unanimous  
8 adoption by the municipalities that they would be required  
9 to move forward with a plan through the legislation.

10 REPRESENTATIVE MCGILL: Thank you very  
11 much.

12 MR. JACOB: May I comment on that too?

13 For instance, the Northern Federation, as you heard  
14 in my testimony, has nine municipalities. Say, for  
15 instance, we develop an integrated water resources plan  
16 for the entire French Creek Watershed, which goes through  
17 most of those nine municipalities. Actually, it goes  
18 through I think seven of the nine. Say, for instance,  
19 that particular French Creek Watershed, five of those  
20 municipalities that adopt into the integrated water  
21 resources plan and want to impose certain regulations  
22 to preserve the integrity of a water supply and something  
23 like that and preserve our future needs and our streams,  
24 and so forth. I would think five municipalities opting  
25 into that would be a step in the right direction rather

1 than the other alternative since two opted not to go  
2 into it, you wouldn't have any control whatsoever.  
3 And from that reasoning, you know, and once like five  
4 municipalities opt into it and they say, hey, the other  
5 two that were a little timid of going into it looked  
6 at it and said, well wait a minute. I think we made  
7 a mistake after they see what went in.

8 But you can't do planning and start to  
9 put controls in without at least having a start. I  
10 think there should be flexibility in any legislation  
11 that if there is more municipal groups that want to  
12 work together, they can to achieve a common goal for  
13 everybody.

14 But when you really look at it, who is  
15 in charge of the health, safety and welfare of the communities?  
16 It is the supervisors of the townships and those super-  
17 visors need to look at these things. And when you  
18 have a group like the Northern Federation of Chester  
19 County Communities that we have worked on a voluntary  
20 basis since 1974 starting with five municipalities and  
21 now we are up to nine and we meet every month and discuss  
22 these issues. Right now, as I stated in my testimony,  
23 we have developed a very comprehensive sustainable water-  
24 shed program with the Green Valleys Association, with  
25 a lot of data developed off of U.S.G.S, developed by

1 Tom Cahill Associates out of West Chester. We have  
2 a lot of very detailed background data to support this  
3 sustained watershed management program.

4 But the way the existing laws are now,  
5 we can adopt a storm water management segment, maybe  
6 continue to work on the waste water management segment,  
7 and so forth, but we cannot sit there and impose restrictions  
8 on water withdrawals and so forth, because we do not  
9 have the power to do that.

10 CHAIRMAN REBER: Thank you very much,  
11 Representative McGill. Gentlemen, thank you so much  
12 for your testimony. I appreciate your time in traveling  
13 to Harrisburg today.

14 MR. JACOB: Thank you.

15 MR. O'NEILL: Thank you.

16 CHAIRMAN REBER: Our next panelists that  
17 I am going to call is the Executive Director of the  
18 Green Valleys Association, John ~~Hookstra~~ and the President  
19 of the French and Pickering Creeks Conservation Trust,  
20 Inc., Eleanor Morris. And Mrs. Morris, of course, has  
21 been in the environs of the capitol many times in the  
22 past. She is the widow of former Representative Sam  
23 Morris, who served with Representative George and myself,  
24 Representative Jarolin I believe. Most of our other  
25 younger members didn't have the pleasure of serving

1 with this genuine, true citizen, legislator that we  
2 so graciously had the opportunity to work with for many,  
3 many years.

4 With that, I see that my staff put the  
5 lady second and I am going to certainly take the prerogative  
6 of the Chair and also show that chivalry is not dead  
7 in the halls of the House and ask if Mrs. Morris would  
8 proceed with the opening remarks.

9 MRS. MORRIS: Thank you very much. It  
10 is so nice to be back amongst friendly faces and some  
11 of our old connections. Having been given the honor  
12 of speaking first, I would be willing to say I am very  
13 friendly with my partner here, John Hoekstra, and work  
14 well with him.

15 So, with that I will begin by saying,  
16 as Representative Reber has already said, that I represent  
17 French and Pickering Creeks Conservation Trust, which  
18 was founded by Sam to preserve natural areas, open land  
19 and historic sites in the watersheds of the French and  
20 Pickering Creeks. That was in 1967 and we are now celebrating  
21 our 31st anniversary. From the outset, protection of  
22 the water resources of the creeks and the lands through  
23 which the creeks flow were goals of the Trust.

24 Since our founding the Trust has remained  
25 faithful to the mission of protecting its water resources,

1 but the task has become increasingly difficult because  
2 the issue has now expanded and become much more diverse.  
3 The pressure to use water resources to benefit land  
4 development and to further the interests of the bottled  
5 water industry have combined into an assault on water  
6 protection that is presenting almost insurmountable  
7 problems to conservationists. The problems caused by  
8 these new directions and expanded uses are not ours  
9 alone, however. They are ubiquitous across the Commonwealth  
10 and the country.

11 In the Commonwealth, the basic cause  
12 for these problems is that Pennsylvania has no statewide  
13 water policy. As we say in the Trust, it is a matter  
14 of "first-come, first-served." This was stated more  
15 aptly by the Honorable James Seif, Secretary, Department  
16 of Environmental Protection, in his opening remarks  
17 at a recent Water Planning Conference in Pottstown,  
18 when he said, "Court decisions say if you get there  
19 first with the biggest, strongest pump and the deepest  
20 well, the water is yours."

21 May I now say that I applaud the actions  
22 of Representative Reber and Representative Schroder  
23 and, of course, my old friend, Representative George,  
24 and other members of the Committee for undertaking to  
25 alter this deplorable situation we are now in by presenting

1 House Bill 2625 which lays the framework for an integrated  
2 water resources plan. The proposed Bill, running counter  
3 to previous policies on water, will entail an formidable  
4 amount of hurdles, particularly if changes are required  
5 to the MPC and the role of the Delaware River Basin  
6 Commission in regard to what constitutes a watershed  
7 has to be reoriented. As these hurdles are met, and  
8 hopefully overcome, you and your colleagues will have  
9 responded to a critical call for help from many different  
10 groups who, in their different ways, are trying to save  
11 the most valuable water resources of the Commonwealth  
12 before it is too late. In addition, this proposed legisla-  
13 tion may also help to heighten the need for a more environ-  
14 mentally directed attitude towards water in other parts  
15 of the country.

16 Before commenting on the Bill itself,  
17 a comparison between Trust efforts to protect water  
18 resources in the early 1970s and 1980s with the present  
19 situation in the 1990s may demonstrate the shift from  
20 the postive to the negative and highlight the acceleration  
21 and intensity of pressures on water facing conservationists  
22 today. During those early ~~years~~, the Trust was involved  
23 in three positive steps to protect the water quality  
24 of our streams. And I will just outline them briefly  
25 so that you can know what type of steps they were.

1                   In 1975, the Trust undertook a Preservation  
2 Report for parts of the Pickering Creek. The report  
3 entitled, Pickering Creek Valley- A Preservation Opportunity,  
4 was written by Thomas R. Richards of Arlington, Virginia,  
5 ~~with~~ the guiding principle that waterways are living  
6 beings which should not be bound by artificial Township  
7 boundaries. The Report covered parts of the Pickering  
8 Creek in three townships; Charlestown, East Pikeland  
9 and West Pikeland. Since the Report was published in  
10 1976, it has been an enormous help in assisting municipal  
11 officials and private landowners to set aside creek  
12 lands. To date, over a mile and half of the Creek has  
13 been protected. Another 17 acres will soon be added  
14 thanks to grants from the County Preservation Partnership  
15 Program and the state Keystone Land Trust. A similar  
16 Report covering parts of five townships for the Upper  
17 Reaches of French Creek is underway and hopefully will  
18 be published shortly.

19                   A second step was taken in the early  
20 1970s under the guidance of Dr. Maurice Goddard, at  
21 the time Secretary of the Department of Environmental  
22 Resources. The Department was in charge of regulating  
23 water quality. Dr. Goddard was a personal friend and  
24 anxious to help the Trust to protect its water resources  
25 by having our two creeks designated "Conservation Stream

1 Use." This term was used to designate streams which  
2 maintained a high degree of water quality, "a better  
3 quality than the applicable water criteria."

4 The purpose of the designation was to  
5 impose the highest standards possible for waste water  
6 treatment, where and when, "a new source of pollution"  
7 might occur. The regulation was targeted at developers  
8 who planned to dispose of sewage from the development  
9 directly into the stream. The hope was to keep the  
10 stream "in a relatively pristine condition," both at  
11 the present time and in the future. The lower section  
12 of French Creek had to be excluded because at that time  
13 it was already polluted.

14 The application of the Trust to protect  
15 our two creeks by this designation was extended to Green  
16 Valleys Association and the Brandywine Conservancy so  
17 that Pigeon Creek and the headwaters of the Brandywine  
18 Creek might also be included. The area finally agreed  
19 upon by DER covered parts of 18 rural townships.

20 As the process for this designation continued,  
21 two public meetings were held to satisfy officials from  
22 the Department that there was sufficient public support  
23 for the designation. At the second meeting, attended  
24 by Dr. Goddard, over 2500 signatures were presented  
25 favoring the proposal. On September 16, 1975, the final

1 step was taken when the Environmental Quality Board,  
2 with Dr. Goddard presiding, approved the designation  
3 for the area as outlined.

4 Later the standards for Conservation  
5 Stream Use were weakened and the name was changed to  
6 "High Quality." Recently, however, Dr. Ralph Heister  
7 of Green Valleys Association has made a relentless effort  
8 to move the waters included in the original designation  
9 to an even higher one called, "Exceptional Quality,"  
10 and this a process that is almost complete.

11 In the late 1970s the Trust made a third  
12 move to protect our two watersheds by having both creeks  
13 designated scenic waterways. The competition across  
14 the state for the designation was stiff. In its presentation  
15 to the Task Force on January 12, 1977, the Trust reviewed  
16 the setting of the two creeks, stressed their natural  
17 configuration, and outlined the unusual features of  
18 each. In connection with French Creek, the early "Iron  
19 Industry," and the importance of the forges during the  
20 Revolution was mentioned, as well as, its recreational  
21 values which include French Creek State Park, Hopewell  
22 National Historic Site, Warwick County Park, as well  
23 as the large acreage owned by the State Game Commission.  
24 When the Task Force completed its review, French Creek  
25 came up with a higher rating than the Pickering and

1 was eventually recommended as the fourth stream in the  
2 Commonwealth for study.

3 The following year, DER awarded the Trust  
4 funds to make the required study. An Advisory Committee  
5 was set in motion, the required public meetings took  
6 place and a number of persons volunteered to gather  
7 information on flora and fauna. Finally, the groups  
8 and individuals in favor of the designation outnumbered  
9 those protesting. In the fall of 1980, Sam, then Legislator  
10 for the 155th District, introduced legislation in the  
11 House to designate French Creek as a "Scenic River."

12 The Bill passed both the House and the Senate unanimously  
13 and was signed by the Governor on April 24, 1982. French  
14 Creek thus became the fourth waterway in the Commonwealth  
15 to be so named and the first in the Pastoral Category.

16 Subsequently, the Northern Chester County Communities  
17 Federation undertook the management of the designation.

18 Guidelines were prepared by the Federation and passed.

19 Now moving on to protecting water resources  
20 in the 90s as compared to the 70s and 80s. One can  
21 only say that the differences are vast. Basically they  
22 compare to a positive experience versus a negative one.  
23 The pressures to develop land in our area and all of  
24 southeast Pennsylvania is intense. Rural land has become  
25 increasingly a sought after commodity. In addition,

1 there is the complicating factor of the large water  
2 companies increasing their territory and even joining  
3 with sewer authorities. The power of this combination  
4 is not only hard on water resources but is a disaster  
5 to organizations trying to protect water and save land.

6 In the last several years, a new threat  
7 to the protection of our water resources has appeared  
8 on the scene. This is the invasion of foreign and domestic  
9 water companies to withdraw spring water to export for  
10 commercial gain. This development affecting the interrelation-  
11 ship between ground and surface water, is dangerously  
12 drawing down the closely related two types of water.  
13 With dismay we watched these recent attempts to deplete  
14 springs which feed our streams. These springs are attractive  
15 to the growing bottled water industry because of their  
16 high grade quality.

17 The action of the Wissahickon Water Company  
18 in Berks County are similar to the actions to those  
19 of Perrier, owned by a multinational corporation, which  
20 is depleting the water resources in the township in  
21 which I live. They are also similar to the smaller  
22 property owners in Warwick and West Vincent Townships  
23 who wish to export water from their spring-fed farm  
24 ponds or just their springs.

25 Contributing to these problems is the

1 failure of such agencies as the Geologic Survey to take a  
2 hard-line position at the time development is being  
3 proposed when the probability of deep wells being drilled  
4 for development will eventually cause neighboring wells  
5 to go dry. It would be far easier if the position was  
6 taken at the time that the wells will go dry in a few  
7 years when the full effect of draw down on the aquifer  
8 is felt.

9 Finally, there is the position of the  
10 Delaware River Basin Commission whose attitude until  
11 recently has been to regard water withdrawals in terms  
12 of their effect on large watersheds rather than the  
13 effect on smaller tributaries. Recent studies by Dr.  
14 Ralph Heister for Green Valleys Association, on sustainable  
15 water management stressed that withdrawals from the  
16 smallest tributary, as well as the larger ones, are  
17 important. This correlates with the thesis that any  
18 large water users should only be allowed to withdraw  
19 as much water as their acreage commands. In this instance  
20 Perrier, which has been drawing down thousands of gallons  
21 of water from the Sassoon Springs only owns 60 acres  
22 of property.

23 While the proposed bill, HB 2625, is  
24 excellent in scope and covers an enormous amount of  
25 topics and steps, a few comments are in order.

1                   1. "Ten square miles," as noted in the  
2 General Provisions of the Bill, as the appropriate size  
3 for a sub-basin should be reduced to an even smaller  
4 amount. While the criteria of ten square miles would  
5 take care of the Perrier situation, it is too large  
6 to assist a much smaller sub-basin such as Stony Run.

7                   2. An advisory planning group, such  
8 as the Northern Chester County Community Federation,  
9 this is my second suggestion, needs to be given equal  
10 status with more formal groups of municipalities who  
11 have surrendered part of their autonomy in order to  
12 become part of an officially directed regional planning  
13 group. If this were made clear in the proposed Bill,  
14 it would enable the Federation to benefit from the amendments  
15 recently passed by the Delaware River Basin Commission  
16 which would allow a group of municipalities within a  
17 common or shared watershed to determine the amount of  
18 withdrawal within their area of concern. And I certainly  
19 want to support Charles Jacob for his remarks and for  
20 the work of the Federation of which I was a member for  
21 many years, particularly in his comment about if they  
22 can make suggestions, their local municipalities on  
23 sewage, storm water, and so forth. They should certainly  
24 be allowed to do so on water.

25                   3. Another comment I have is that the

1 Bill should contain a provision to preclude developers  
2 from circumventing the permitting requirements of the  
3 DRBC on withdrawals exceeding 100,000 gallons per day.  
4 In the case of Barton Meadows, East Vincent Township,  
5 the developer took advantage of this flaw in the Delaware  
6 River Basin Commission regulations and drilled wells  
7 in a development, which withdraws far more than the  
8 100,000 gallons allowed.

9 Thank you very much for this opportunity  
10 to speak, and congratulations again in your bold attempt  
11 to bring to Pennsylvania what it has long needed an  
12 "Integrated Water Resources Plan." Thank you very much.

13 I forgot to mention that I brought you  
14 an exhibit. I have it over here. If you could just  
15 wait a minute, I would like to put it up front of you.  
16 I brought two bottles, one of which I carried from Spain.  
17 This is to show that one of our troubles about Perrier  
18 is that, if you look closely at the labels, they are  
19 under four different names. They are four of the largest  
20 bottling companies in the country. This is real Perrier.  
21 It was the only thing to drink in the hotel in Spain.  
22 Homo Springs is another one. My eyes are too bad to  
23 -- I don't know what that other one is.

24 CHAIRMAN REBER: We will see what we  
25 can do to incorporate these into the record.

1 (Laughter.)

2 Exhibit A, Homo Springs Exhibit B. Are  
3 there any objections? Seeing none, they are admitted.

4 Mrs Morris, thank you very much. At  
5 this time Chairman George has another longstanding engagement  
6 and I would like to recognize him before leaves to ask  
7 the lady any questions or make any comments.

8 MRS. MORRIS: I am really happy that  
9 he stayed.

10 REPRESENTATIVE GEORGE: I am not about  
11 to ask any questions. I just want this Committee to  
12 know that you and your fine husband many years ago started  
13 the movement for water conservation long before it became  
14 popular. Thanks to what you have accomplished today  
15 that we can talk about water conservation and the protection  
16 of such and we are not inundated by industry who claim  
17 we are trying to chase everybody out of state because  
18 we are trying to limit. He had such a unique ability  
19 to foresee what would happen in the next 20 or 30 years.  
20 I am talking about your fine husband.

21 This is not a good day for me in that  
22 I won't have too many more meetings with my colleagues,  
23 Bob Reber, who has been a gentleman, a fine leader of  
24 this Conservation Committee. Nevertheless in this job  
25 that we have there are some good things happen, one

1 of them of course as you know, was having Sam Morris  
2 sit on this committee when I chaired it. I always abided  
3 by his wisdom and guidance and held him in the highest  
4 esteem.

5 I appreciate very much you coming up  
6 here today for this purpose. Thank you.

7 MRS. MORRIS: Thank you, sir, very much.

8 You have been very kind to me since Sam died.

9 CHAIRMAN REBER: Thank you very much,  
10 Mr. Chairman. At this time We will move to John Hoekstsa,  
11 Executive Director of the Green Valleys Association.

12 First, I hope I pronounced your last name correctly.

13 MR. HOEKSTRA: You have done it very  
14 well. Thank you, Mr. Chairman. Good morning distinguished  
15 members of the House Environmental Resources and Energy  
16 Committee.

17 My name is John Hoekstra. I am the Executive  
18 Director of the Green Valleys Association (GVA) and  
19 on behalf of my Board and our 1000 members, I wish to  
20 express our gratitude for the opportunity to testify  
21 before you today. Green Valleys is a non-profit watershed  
22 protection and environmental education organization  
23 founded in 1964. Our area of stewardship encompasses  
24 the five watersheds of northern Chester County which  
25 total 151 square miles of High Quality and Exceptionally

1 Valued Waters. Those five watersheds are the Stony  
2 Run, Pigeon, French, Pickering and Valley Creeks. The  
3 Green Valleys Association's mission is to protect the  
4 natural resources of the area, educate the community  
5 to heighten environmental awareness and to advocate  
6 environmental guidelines for future growth.

7 Beginning in 1994, GVA began the Sustainable  
8 Watershed Management Program which links land use with  
9 surface and groundwater resources. This program's objective  
10 is to measure the tolerance of the natural system and  
11 balance the human use of these land and water resources  
12 so that we can live within the limits of these systems.

13 GVA's intent is to allow development with minimal impact  
14 on water resources, by changing how development takes  
15 place within the watersheds. The current system of  
16 land use allows random development, limited only by  
17 zoning and land use regulation, and water resource impacts  
18 are seldom considered with respect to the local drainage  
19 system. We have just begun the Implementation (Phase  
20 II) of this work which we will be applying the science  
21 that has come out of our studies and will be providing  
22 model ordinances dealing with stormwater, wastewater  
23 and water supply. Municipalities may adopt these ordinances  
24 as standing or with modification to meet their concerns.  
25 The Sustainable Watershed Management Program has been

1 accomplished through the support of all the members  
2 of the Federation of Northern Chester County Communities  
3 whose number one priority has been its protected and  
4 limited water resources.

5 In regards to the Bill itself:

6 GVA supports House Bill number 2625 as  
7 it provides the necessary cornerstone with which municipal-  
8 ities within common watersheds can objectively develop  
9 integrated water resource plans that will protect, con-  
10 serve and provide for developing of water resources  
11 for current and future generations. This legislation  
12 is another vital step towards providing for a sustainable  
13 future. I would like to offer the following recommendations  
14 for your consideration.

15 In Chapter 1, Section 102, subsection  
16 (1) change to read, "a region or area containing not  
17 fewer than 3 square miles drained by a river or stream,  
18 natural in origin." The reason for this recommendation  
19 is so that a drainage basin, like the Stony Run basin,  
20 a High Quality watershed and which is approximately  
21 5.7 square miles would not be left out of an integrated  
22 water resource plan.

23 Section 102, a definition should be listed  
24 for the commission. Instead of a joint planning commission,  
25 however, we would recommend that it be called an Itegrated

1 Water Resource Commission (IWRC). This would eliminate  
2 the commission having to deal with other ordinances  
3 not dealing with water.

4 Section 102, subsection (2) Integrated  
5 Water Resource Planning Commission (IWRC) should be  
6 added to the river basin commission and the department  
7 as designating a subbasin. This Integrated Water Resource  
8 Commission would be closer to the issue of subbasins,  
9 defined as first order streams, within their watersheds  
10 and which ones are most at risk.

11 Section 305, subsection 4(c) testimony  
12 received during a public hearing should be recorded  
13 by a court reporter.

14 Section 305, subsection 4(d) change last  
15 sentence to read, "The department may seek review and  
16 input from the corresponding river basin commission,  
17 where available, and in whose watershed the integrated  
18 water resource plan is being proposed. Being that this  
19 is a statewide Bill it would involve other river basin  
20 commissions other than just the Delaware River Basin  
21 Commission. Also, I would like to add that the Integrated  
22 Water Resource Planning Commission may submit their  
23 integrated water resource plan for inclusion in the  
24 river basin commission compact.

25 Section 308 Clean Streams Act should

1 be added so that it may also be taken into account.

2 Section 309 Integrated Water Resource  
3 Planning Commission should have the opportunity for  
4 grants and technical assistance. I believe the way  
5 it is written right now that is not really clear.

6 In closing, water issues are not something  
7 brand new as you have already heard today. From the  
8 water wars in the west, to the droughts in Marin County,  
9 California in 1974, to the recent drought in Pennsylvania  
10 in 1995, people suddenly become quite aware of how important  
11 water is in their lives. But as with the gas lines  
12 in 1973, when the crisis is past, everyone soon forgets  
13 about planning for the future. One-third of the world's  
14 nations are experiencing severe fresh water withdrawal  
15 stress today, and by the year 2025, two-thirds of the  
16 world's nations will be suffering the same fate. If  
17 this state or any state is serious about protecting  
18 their water resources for current and future generations,  
19 they must act immediately.

20 For us to squander any more time in putting  
21 into place the legislative mechanisms by which municipalities  
22 within common watersheds can objectively plan for and  
23 manage their valuable water resources would be foolish.

24 By the amount of dollars being spent  
25 on commercials marketing water from all corners of the

1 nation one would surmise that there is fortunes to be  
2 made from these precious water resources and in matters  
3 driven by large profits there seems to be a somewhat  
4 of a reckless approach concerning the long range welfare  
5 of these resources to take advantage of today's market  
6 trend. If we rely on broad regional water guidelines  
7 to protect this modern commodity from being overharvested,  
8 these sustainable local waters will be bankrupt.

9 With the virtual gold rush that has been  
10 created by the FDA's approval of well water being allowed  
11 to be marketed as "natural spring water," and with the  
12 phenomenon known as "suburban sprawl" and with the uncertainty  
13 of today's radical shifts in weather, we encourage members  
14 of the committee to successfully move this Bill through  
15 the House so that some day soon we will have the legisla-  
16 tion necessary for providing the framework for good  
17 sound science in providing for sustainable water re-  
18 sources. With that I thank you.

19 CHAIRMAN REBER: Thank you very much,  
20 Mr. Hoekstra. Any questions from any members of the  
21 committee? Representative Schroder.

22 REPRESENTATIVE SCHRODER: No questions,  
23 but I just want to thank both Eleanor and John for making  
24 the trip up here to testify on behalf of this legislation  
25 today. I just want to note for the benefit of the committee

1 and those in attendance that these two organizations,  
2 Green Valleys and French and Pickering Creek are real  
3 leaders in Chester County, indeed, the region and the  
4 state in promoting sound use of water resources and  
5 protecting and preserving some of the finer qualities  
6 that we have in Chester County. So I want to thank  
7 you.

8 MR. HOEKSTRA: Thank you.

9 CHAIRMAN REBER: Thank you very much  
10 and I appreciate you taking your valuable time in driving  
11 to Harrisburg today to join with us and present testimony.

12 MRS. MORRIS: Thank you, sir.

13 CHAIRMAN REBER: And our last group to  
14 testify is both Mr. Hill Levinson and Tim Weston. Mr.  
15 Levinson is a consultant with the Pennsylvania Bottled  
16 Water Association and Tim Weston is former Deputy Secretary  
17 with the Department of Environmental Resources prior  
18 to being bifurcated by my legislation a few years ago  
19 and is now involved in various water management issues.  
20 Gentlemen, thank you very much for taking your valuable  
21 time to be with us. Mr. Levinson, would you like to  
22 proceed first?

23 MR. LEVINSON: Thank you. Chairman Reber  
24 and Members of the Committee and Representative Schroder.

25 On behalf of the more than 50 bottled

1 water companies in the Commonwealth of Pennsylvania,  
2 I thank you for this opportunity to address you on this  
3 very significant topic of water conservation and the  
4 proper control of its use. Present today are members  
5 of the Pennsylvania Bottled Water Association, which  
6 we affectionately refer to as (PaBWA) and I would like  
7 to take a minute of your time to introduce them.

8           There is Francine Walker from the Cloister  
9 Spring Water Company. She is the supervisor of Quality  
10 Systems. Francine, raise your hand if you would.  
11 There is Scott Hoover. He is the General Manager of  
12 the Roaring Spring Bottled Water Company. We have a  
13 father and son combination, Austin Hess, Chairman, and  
14 Rick Hess, President, of Ephrata Diamond Spring Water  
15 Company. Jay Land of the Wissahickon Spring Water Company.

16       And one additional guest, a gentleman who drove up  
17 from Washington, D.C. to be with us is David Dexter,  
18 who is the Director of Government Relations for the  
19 International Bottled Water Association, IBWA.

20           Just last week, we at PaBWA learned of  
21 the existence of House Bill 2625, and decided that we  
22 would ask for the opportunity to be heard by this Committee.

23       We asked to be heard because, among some, we are a  
24 very misunderstood group of businessmen, and this should  
25 be an excellent opportunity to tell our story so that

1 hopefully, some of the misconceptions can be dispelled.  
2 That is not to say that there is not room for improvement  
3 in some aspects of the way we go about our business  
4 of collecting and delivering pure water for human consumption  
5 and hydration.

6 But first let me talk about our product.

7 Bottled water is more popular than ever because of two  
8 broad factors. First, it is viewed as a healthy alternative  
9 to other beverages because of its lack of caffeine,  
10 sugar, alcohol or calories. Its role in human hydration  
11 is becoming more evident especially to consumers who  
12 have traditionally preferred sodas and juice drinks.  
13 Second, for some consumers bottled water is a vital  
14 replacement for tap water. They do not view bottled  
15 water as some frivolous product or yuppie luxury. These  
16 consumers, whether they have private wells or tap into  
17 public water utilities, choose to drink bottled water  
18 because it either tastes better or because they do not  
19 trust their regular source of drinking water, or both.  
20 With all of that said, the bottled water industry nationally  
21 uses less than one percent of the ground water extracted  
22 annually for all purposes. We use less than private  
23 water utilities, less than residential developments,  
24 less than sawmills, less than electric companies, and  
25 less than many other uses too numerous to mention.

1 And yet we find ourselves the target of this legislation.

2 I guess all of us must ask the question "WHY?"

3           Recently there has been a dramatic increase  
4 in public and government attention to the issue of water  
5 use regulation. There are many factors behind this  
6 increased interest, including the deteriorating quality  
7 of many watersheds, more public discussion of depletion  
8 rates of certain aquifers and a renewed focus on water  
9 use regulation by environmental and agricultural groups.  
10 The bottled Water industry shares the same goals as  
11 others concerned about water rights. Our industry's  
12 future depends on good stewardship of water resources  
13 and an unwavering dedication to protecting water quality.

14           It is interesting and important to note  
15 that the most significant asset of a bottling company  
16 is its water source. The quantity of water taken from  
17 that source is self-enforcing. If we take too much  
18 from the ground, we ruin the source for our future use.

19           No bottler in Pennsylvania is so irresponsible as to  
20 impair the most irreplaceable component of the bottling  
21 business. Bottlers spend large amounts of money constantly  
22 evaluating, monitoring and testing their water source  
23 to protect it from abuse. What has been missing is  
24 the sharing of this information with the public at large  
25 and the ensuing building of good faith with them.

1                   The building of good faith with the public  
2 begins with education: education about the nature and  
3 character of the source of water supply, how that supply  
4 is used within its natural limitations and in consideration  
5 of the needs of other users.

6                   Sustainable Development is a popular  
7 term (and concept) used by natural resource managers.

8           In short, the concept involves implementing a development  
9 and use strategy that stays within the boundaries of  
10 nature, by never taking more than nature returns and  
11 leaving enough left over to satisfy the needs of other  
12 people and ecosystems also dependent on the resource.

13                   Sound water resource stewardship is effectively  
14 achieved using the sustainable development approach.  
15 This includes the application of best resource management  
16 practices developed in keeping with the nature and character  
17 of the water resource system of concern.

18                   The bottler who understands the resource  
19 that hosts his source of supply and consistently and  
20 effectively articulates those facts to the public will  
21 not only be in a position to make well-informed resource  
22 management decisions, but will also optimize the good  
23 faith building process.

24                   Cooperation of neighbors is essential,  
25 in many ways, to the long term protection of each of

1 our source of supply. First and foremost, a properly  
2 understood and managed water supply will provide the  
3 greatest long-term value to the owner. For example,  
4 overuse of the resource will never be in the best interest  
5 of the bottler, because overuse will ultimately lead  
6 to quantity or quality degradation. In almost all instances,  
7 what's good for the source is also good for the water-resource  
8 user community as a whole.

9 All of this being said, we are in no  
10 way suggesting that the water resources in Pennsylvania  
11 should not be regulated. There is nothing more difficult  
12 for a businessman to deal with than uncertainty, and  
13 an unregulated resource is uncertainty. As responsible  
14 members of our respective communities, we have learned  
15 that we must listen to and be responsive to our neighbors  
16 on many issues. However, all of us need a higher authority  
17 to help us understand the technical aspects of sharing  
18 a natural resource such as water. We thank the sponsors  
19 of this Bill, the Members of this Committee and all  
20 those legitimately concerned with the issue before us  
21 for initiating an opportunity to openly discuss what  
22 is the best way for us in Pennsylvania to attain "Sustainable  
23 Development," while maximizing the use for all who want  
24 to enjoy the benefits of our natural resource, water.

25 We are fortunate that most of Pennsylvania

1 falls into one of five river basins. We are even more  
2 fortunate that historically there was the wisdom to  
3 enter into compacts forming the various River Basin  
4 Commissions. Prior to their formation there was a "crazy-quilt"  
5 of authorities, which did little to scientifically address  
6 the issues of water conservation. Unfortunately, or  
7 maybe fortunately, Mother Nature does not always follow  
8 the political boundaries that we have established.  
9 This is most evident in how ground water and surface  
10 water collects and is distributed within its own ecolog-  
11 ical system. Just because we draw a line evidencing the  
12 boundary of a political entity, that line surely doesn't  
13 stop a creek or aquifer from following its own rules  
14 which determine where it flows and whom it benefits.  
15 The study of these rules requires substantial investments  
16 of technical and scientific study if they are to be  
17 understood. The River Basin Commissions have the financial  
18 resources to perform these studies, and have done so  
19 since their formation in a most equitable and environ-  
20 mentally sound way.

21                   If the issue of water use controls in  
22 Pennsylvania is addressed by the Legislature, we respectfully  
23 suggest that science and technology must lead the way.

24       We have in place, with the River Basin Commissions,  
25 a methodology that should be used in designing a statewide

1 program for water conservation. We should not return  
2 to a system that has proven itself to be ineffective  
3 at best, and of little real value in solving the issues  
4 we all want to resolve. Artificial political boundaries  
5 can only lead to unnecessary disputes, uncertainty and  
6 litigation among and between competing interests. Additionally,  
7 the cost to each political entity for creating their  
8 plan will be huge.

9 PaBWA, on behalf of the bottler of Pennsyl-  
10 vania, wants to participate in moving forward with developing  
11 a comprehensive, scientific plan for water conservation.

12 But first, let us step back and look at the issues  
13 which we must address. Only then can we be sure that  
14 we have the best approach available for Pennsylvania  
15 for this important issue. We wish to join with you  
16 in that search. Thank you.

17 CHAIRMAN REBER: Thank you, Mr. Levinson.

18 Does anyone on the Committee have any questions for  
19 Mr. Levinson? Representative Schroder.

20 REPRESENTATIVE SCHRODER: Just one ques-  
21 tion. Thank you, Mr. Chairman.

22 BY REPRESENTATIVE SCHRODER:

23 Q Mr. Levinson you talk about on page 2  
24 finding sustainable development. Then seem to say on  
25 page 3 that you look forward to initiating an opportunity

1 to explore how sustainable development can best be accomplished  
2 in Pennsylvania. My question to you doesn't the concept  
3 of bottling water and shipping it outside the watershed,  
4 which I understand is known as consumptive use of water,  
5 doesn't that basically fly in the face of the concept  
6 of sustainable water management?

7 A No, sir. Actually what I think is being  
8 suggested is a combination of two scenarios that are  
9 really inconsistent with each other. The issue of where  
10 it is shipped to has little to do with sustainable development.  
11 The issue of sustainable development has to do with  
12 what is the highest and best use of that resource and  
13 what is the best way to conserve it. Where that bottle  
14 of water may or may not wind up is, with all due respect,  
15 irrelevant to a sustainable development.

16 REPRESENTATIVE SCHRODER: Thank you,  
17 Mr. Chairman.

18 CHAIRMAN REBER: Any questions from any  
19 other members? Representative Levdansky.

20 REPRESENTATIVE LEVDANSKY: Thank you,  
21 Mr. Chairman.

22 BY REPRESENTATIVE LEVDANSKY:

23 Q Mr. Levinson, I want to make sure I  
24 understand your testimony. You seem to suggest, at  
25 least my reading of your testimony is, you seem to suggest

1 that the better way to go about regulating the out-take  
2 of water ~~ought to be~~ vested with the river basin commissions  
3 rather than with local municipalities or counties. Am  
4 I reading your testimony properly?

5 A Partially, yes, and partially at least  
6 to look at the methodology that has been so carefully  
7 developed by the river basin commissions and using that  
8 as a guidepost for the development of some kind of a  
9 statewide approach to water conservation. I am not  
10 necessarily suggesting that, and again, it may well  
11 be that is the best direction to go. That everything  
12 be given to the river basin commissions and let them  
13 handle it all. But I am saying to you even if that  
14 is not done, their expertise, their methodology of approaching  
15 the issue of what is a sustainable development and what  
16 is in the best interest of the use of the water, I think  
17 has been proven very valid. And we cannot, we should  
18 not ignore that information.

19 The other thing that concerns me, and  
20 this is purely as a taxpayer now, not necessarily to  
21 do with PaBWA. One of the things that concerns me about  
22 this approach that House Bill 2625 is suggesting is  
23 we may be getting into a lot of duplication of abilities  
24 to handle this issue. One of the things that I have  
25 always been concerned about in government is that if

1 there is a resource available and if we already have  
2 the ability to do something and it is well situated  
3 within a particular agency, let's look at that and see  
4 if we can improve on that and use that without making  
5 some other entities and spending the money to be able  
6 to create some additional entities, you know, and not  
7 use the ones that are already available. So, that is  
8 a concern of mine also.

9 Q Well let me just throw out an idea for  
10 your reaction. What if we were to vest the authority  
11 to regulate the out-take of water be it surface or groundwater?

12 What if we give in law that authority to the Department  
13 of Environmental Protection and then let them work through  
14 the established river basin commissions to implement  
15 the law? Would that be a more appropriate way to go?

16 A Depending on how that is formulated,  
17 it may well be a very satisfactory approach. Or it  
18 could be the other way. It could be that the river  
19 basin commissions do it and give the information and  
20 is fed through one of the Commonwealth of Pennsylvania  
21 Departments. I mean, we have other legislation that  
22 we're involved in that supposedly is moving our regulation  
23 of the bottled water industry from DEP over to Agriculture.

24 So that that is another question that we are very actively  
25 involved in.

1 I don't think PaBWA is here today saying there is only  
2 one way to skin this cat. There is probably a number  
3 of variations. What we are suggesting, however, that  
4 to return to very small inconsistent political entities,  
5 again, we respectfully ~~suggest~~ suggest that is a return to  
6 an area that has proven problematic in the past. We  
7 would like to suggest that before we move ahead with  
8 this, we more carefully look at what is already available  
9 to us and make the best use of that.

10 Q But you do at least acknowledge the need  
11 to regulate this issue?

12 A We are very much in favor. In my testimony  
13 I indicated one of the problems a businessman has, I  
14 mean, a businessman can deal with almost any situation  
15 that this wonderful legislature might impose upon it  
16 as long as we know what it is and there is a way of  
17 going through that process. Uncertainty is our biggest  
18 problem.

19 REPRESENTATIVE LEVDANSKY: Thank you.

20 CHAIRMAN REBER: Thank you, Representative  
21 Levdansky.

22 BY CHAIRMAN REBER:

23 Q Mr. Levinson, you referenced that the  
24 bottled water industry nationally uses less than one  
25 percent of the groundwater extracted annually for all

1 purposes. Do you know what the percentage is as to  
2 the usage by the bottled water industry that all your  
3 representative individuals here in Pennsylvania extract  
4 annually?

5 A It is my understanding it is about the  
6 same, less than one percent, yes, sir.

7 CHAIRMAN REBER: Thank you. Any other  
8 questions?

9 (No response.)

10 Thank you very much.

11 Mr. Weston, you can proceed with your  
12 remarks.

13 MR. WESTON: Mr. Chairman and Members  
14 of the Committee, I am going to truncate my testimony  
15 in light of the hour of the day and try to hit some  
16 highlights in terms of my observations.

17 First, as many of the members of the  
18 Committee are aware, I previously served in the Commonwealth  
19 better than for 15 years as Associate Deputy Secretary,  
20 as the lawyer who headed the water laws and institute  
21 for arrangement and study of the Pennsylvania State  
22 Water Plan, as a commissioner on the Delaware, Susquehanna,  
23 Ohio and Great Lakes Commission, and more recently in  
24 my private practice, I have served as one of Pennsy-  
25 lvania's members of the American Society of Civil Engineers

1 Water Law Committee which developed the recently published  
2 Water Rights Act and the American Water Association's  
3 Water Law Committee.

4           The remarks I am making today are on  
5 behalf solely of myself. I have represented a variety  
6 of clients in the water resources area, but I am not  
7 representing them here today. Let me say that I am  
8 also bringing the perspective of having been the counsel,  
9 the representative of State Collge Borough Water Authority  
10 in precedent setting cases that ended in State College  
11 Borough Water Authority vs. Benner Township before our  
12 Supreme Court. And so I do bring some perspectives  
13 of the arguments in that matter as to the relationship  
14 between river basin, state and local regulation of water  
15 resources.

16           There is little doubt that Pennsylvania,  
17 its economy, its environment and its future depend on  
18 water. All of our industries could not exist in the  
19 absence of abundant, relatively inexpensive high quality  
20 water supplies. The stewardship of those resources  
21 to be effective requires uniform and integrated approach  
22 to water management. And no one action alone constitutes  
23 such water management. It is not simply planning, it  
24 is not simply regulation. Water conservation alone  
25 will not do the job. Developing reservoirs alone will

1 not do the job. Integrated water resources management  
2 requires effective action by government in concert with  
3 private enterprise taking an active role in all of those  
4 areas for planning, conservation, nurturing in developing  
5 of our resource.

6           There is no doubt that Pennsylvania needs  
7 to consider updating its water management laws to address  
8 current and future challenges into the 21st Century  
9 With the exception of those areas currently under the  
10 regulatory practices in water management in the Delaware  
11 and Susquehanna River Basin Commissions. Much of our  
12 current water management system is mired in outdated  
13 common law doctrines (which ~~defy hydrologic~~ fact) and hodgepodge  
14 of ad hoc regulatory enactments. For the past 18 plus  
15 years, since completion of the water laws and institutional  
16 arrangements, study of the State Water Plan, and the  
17 recommendations in 1980 of the Pennsylvania Water Resources  
18 Advisory Committee, this General Assembly has grappled  
19 (in various sessions) with the nettlesome issues of  
20 how best to reform our water management system.

21           I would like to focus on some guideposts  
22 that have been developed looking at what other states  
23 have done that have been successful, and more recently,  
24 the ASCE Model Water Code. The key principles of successful  
25 water management systems are as follows:

1 Equal and uniform treatment of all users  
2 of water without regard to political boundaries.

3 Second, comprehensive water resources  
4 planning and management under the direction of a single  
5 agency - with the avoidance of balkanization, duplication,  
6 and overlapping and inconsistent ~~decision making~~.

7 Third, recognition that water is a shared  
8 resource, which must be used and allocated equitably  
9 to concurrently meet sometimes competing needs and uses.

10 Fourth management of groundwater and  
11 surface water as part of a single hydrologic system  
12 (rather than establishing separate and segregated management  
13 systems for groundwater and surface water).

14 Next, allocation of water among users  
15 in a manner which fosters efficient and productive use  
16 of the total supply in a sustainable manner.

17 Sixth,, provision of legal security for  
18 water rights within a system that makes water rights  
19 a matter of legal record entitled to legal protection.

20 And finally, coordination of water allocation  
21 and water quantity management systems with water quality  
22 regulation and protection.

23 I must acknowledge that the sponsors  
24 to this bill have brought into focus the importance  
25 of water management for the Commonwealth's future.

1 At the same time, based on my experience, I would respectfully  
2 question whether the arrangements in this Bill, as currently  
3 crafted, will achieve what we need in the Commonwealth  
4 in terms of effective water management system.

5 The members of the Committee are already  
6 well aware of the elements that are in this bill. So  
7 I would like to go to how I view this bill meeting or  
8 not as well meeting the criteria that I just mentioned  
9 for a successful system.

10 My first concern is the balkanization  
11 of Pennsylvania's water resources. Under the arrangement  
12 in this bill, the Commonwealth's 45,000 some odd square  
13 miles of territory, five major river basins could conceivably  
14 be subdivided into literally thousands of watersheds.  
15 Each with its own separate plan and a separate water  
16 allocation system administered in those watersheds by  
17 separate municipalities, in some cases with municipalities  
18 adopting the plan and in others opting out. The concept  
19 of uniform treatment of all water users without regard  
20 to political boundaries would rapidly devolve into a  
21 balkanized array of several thousand "city-states"  
22 pursuing different agendas in the management of a shared  
23 resource.

24 My fear is that it would stimulate and  
25 foster a "we-versus-them" approach to water management.

1       The fact is that these watersheds are all intertied,  
2 but a majority vote in one watershed, let's say in the  
3 Upland area, may well deny further water to serve the  
4 downstream requirements of the metropolitan area.

5       Let me say that during my experience as a Commissioner  
6 on the Delaware River Basin, I had the fortune or misfortune  
7 of actually being in several hearings in which a distinguished  
8 county commissioner in the northern part of the basin  
9 asked why should we allow our water to go to Philadelphia.  
10       And the answer is it flows downstream to Philadelphia  
11 and they have been dependent on that water supply for  
12 well more than 200 years.   The fact is that our Commonwealth  
13 is a highly interdependent array of regions.

14               Let me give a few examples.   Delaware  
15 and southern Chester Counties derive a substantial portion  
16 of their water supply from the Susquehanna River Basin,  
17 although they are located within the Delaware River  
18 Basin.   The Chester Water Authority currently diverts  
19 and delivers up to 60 million gallons per day drawn  
20 from Octararo Creek in and the Susquehanna River for  
21 delivery to communities across southeastern Pennsylvania.

22               As another example, communities in that  
23 share the resources of Bucks and Montgomery County are  
24 all intertied in a system that stands in Neshaminy and  
25 other subbasins.   All are interconnected in an integrated

1 system which combines ground and surface waters in what  
2 is known as a conjunctive management system. The unified  
3 management of surface and groundwaters by season to  
4 meet the needs.

5 Similarly, the communities of the State  
6 College area draw their supply from an integrated series  
7 of well fields, which span several aquifers, five communities  
8 and several watersheds.

9 The fact is that "watersheds" are not  
10 islands. They are not separate and distinct hydrologic  
11 units. Many aquifers cross surface watershed boundaries  
12 and the interrelationship and interdependency require  
13 that we look at a much higher level of decision making  
14 than a simple 10-square mile micro-watershed.

15 The concept of water allocation permit  
16 decision is being made by more than 2,600 separate municipal  
17 governments, in some cases opting in and in other cases  
18 opting out. I believe would be a step backward for  
19 a state. The Delaware and Susquehanna Compacts were  
20 developed in recognition of thousands of separate county  
21 and municipal systems that were not providing for orderly  
22 and fair management of shared resources and were not  
23 effective in conserving the resource. Also, some may  
24 not always agree with the results, the fact is the two  
25 compact agencies are exceedingly efficient in bringing

1 together expertise, scientifically trained staff to  
2 deal with the top issues of water management in a way  
3 that would be nearly impossible for local municipalities  
4 to duplicate. It is difficult at best to find the sufficient  
5 amounts of staff to do this work. It is even more when you  
6 must duplicate it thousands of times over. As stated  
7 by Commonwealth Court in the Benner Case, the basic  
8 commissions were created in no small part to combat  
9 chaos and fragmentation in the management of the basins'  
10 water resources.

11 When the federal government and this legislature  
12 joined together in the compact, they declared the need  
13 for a unified single agency managing the water resources  
14 of the basin and uniform principles being applied to  
15 all water users without regard to the boundary. It was  
16 that basis that led our Supreme Court to the determination  
17 that two basin compacts preempted local regulation.

18 Let me point out that there are savings clauses in  
19 both compacts. And those savings clauses state that,  
20 "the state may regulate the allocation and use of water  
21 resources." That savings clause was very carefully  
22 created to recognize that states have traditionally been  
23 the entities regulating the allocation and use of water.  
24 And so it was envisioned that the states, as sovereigns,  
25 working with the river basin commissions, would jointly

1 manage this resource. Pennsylvania is the one state  
2 in these river basins which has not exercised its full  
3 degree of authority at the state level to serve as a  
4 partner with the river basins.

5 I would also note a concern in House  
6 Bill 2625 that violates one of the most important tenants  
7 of water management, and that is, integrating groundwater  
8 and surface water management in one hydrologic system.  
9 It would create a program for regulating at the local  
10 level groundwater while leaving surface water allocation  
11 somewhere else. In every program that has been effective  
12 around the country, we find the one thing that every  
13 water manager will say, you must regulate the surface  
14 and groundwater withdrawals as part of a single system.  
15 Otherwise you will have the people making decisions  
16 about where they will take the water skewed by the way  
17 the resource is regulated.

18 Next I have concern with respect to the  
19 resources that will be available for planning. A question  
20 was asked earlier as to how much it cost to prepare  
21 an integrated water resources plan or any water resources  
22 plan. I can't give you a figure, although when I was  
23 with state government, we tried to make estimates as  
24 to what it would cost us at the state level to update  
25 our state water plan, and it was millions. It took

1 us several millions to draft the initial state water  
2 plan and that was 15, 20 years ago.

3 Let me just give you a perspective, however,  
4 a single 48-hour pump test operated in a modern fashion  
5 dealing with the regulations of the Delaware River Basin  
6 Commission in the southeastern Pennsylvania Groundwater  
7 Protected Area, leading to a water budget in a single  
8 area where a project was being located, a cost which  
9 is currently born by the applicants can cost as much  
10 as two or \$300,000. Very few of our municipalities  
11 have the capability of making that kind of investment  
12 not just on one project area, but across their entire  
13 watersheds to develop a unified and consistent plan  
14 based on scientific facts. And if we are going to provide  
15 the kind of grants and technical assistance to municipalities  
16 or other entities to do this planning, we should be  
17 prepared for substantial investments to make it work.

18 My fear is that without adequate resources,  
19 the real impact of the approach in this bill would be  
20 to create a benefit to the wealthier communities to  
21 the detriment of their less well off neighbors.

22 Communities that may have the wherewithal  
23 to seek development of a plan may do so and be incentivized  
24 by this Bill to undertake planning and management, but  
25 leave other communities with lesser fiscal resources

1 to basically the whim of whomever may come in with a  
2 project, because they won't have the ability to develop  
3 a program. Is that really wise public policy of what  
4 we need in the Commonwealth?

5           Finally, I have a concern with respect  
6 to the definition of security and water rights. Although  
7 this Bill gives municipalities the ability to regulate  
8 water withdrawals within a context that is akin to the  
9 zoning programs, it does nothing in terms of guiding  
10 one of the most important questions, how a water right  
11 is defined, how it is recorded, what is its scope and  
12 duration, how is it protected and how conflicts between  
13 users are to be resolved? The typical zoning program  
14 is based on a one-time review when a proposed project  
15 proponent comes in for a permit, gets a zoning permit  
16 and then goes out and builds whatever they are going  
17 to do. Water management is a much more dynamic process.  
18 It requires ongoing monitoring and intervention, and  
19 when problems arise, it needs someone who can adjudicate  
20 the difficulty and conflict and find a solution.

21           That is one of the things the two river  
22 basin commissions have done. They have set up a system  
23 where if there is a problem or a complaint, the staff  
24 of the basin commissions can enter the picture and study  
25 the problem and can make a change in the permit or water

1 right in order to accommodate the problem. That is  
2 an important part of a successful water right system.

3 I would endorse this Committee, giving  
4 very serious consideration to the ASCE Riparian Water  
5 Rights Code model, which has recently been published.

6 It represents the efforts of stakeholders from around  
7 the country, industries, businessmen conservationists,  
8 state and regional water managers to try to develop a  
9 model based on the best experience of other states of  
10 what works and what doesn't work. It has many options  
11 for you to choose from in that model. It is sort of  
12 a modular code, but it is based on the fundamental concepts  
13 I mentioned earlier, uniformity, consistency, water  
14 rights that are well defined and a system that integrates  
15 groundwater, surface water, water quality and water  
16 quantity.

17 CHAIRMAN REBER: Is that my cue? With  
18 that in mind, I couldn't help, I was engrossed in the  
19 phraseology that you used relative to the ASCE Code  
20 where you said the key elements of workable water management  
21 arrangement has recognized the in the ASCE Water Management  
22 Code their absence. To me that leaves the basic question  
23 as to why we are here today. I don't think there is  
24 any doubt that certain key elements of an overall workable  
25 water management code, regulatory framework continues

1 to be absent in Pennsylvania. I think that has been  
2 expressed today with the experiences that seem to be  
3 out there in New Jersey and Delaware. And of course,  
4 you dovetail it very well to those provisos we heard  
5 earlier with this particular statement.

6 BY CHAIRMAN REBER:

7 Q Do you feel that by moving in that direction  
8 that that is a direction that would complement the intent  
9 and concerns that have been expressed to some extent  
10 in the basis for the introduction of 2625?

11 A I believe it would. The frustration  
12 that citizens of the commonwealth of going to the river  
13 basin commissions as the sole place that they can be  
14 heard, of having basically other states voting on every  
15 water allocation that we have, and feeling somewhat  
16 remote can, I think, be addressed by the successful  
17 adoption of a water management program within the commonwealth  
18 patterned on the programs such as New Jersey and Florida  
19 and Virginia and Maryland. Those states have very successful  
20 programs and they are linked with their municipalities.  
21 Their municipalities provide input during the entire  
22 water planning process, and the plan when it comes out,  
23 reflects strong input from regions and communities.  
24 But ultimately becomes part of a state water plan in  
25 that a water rights system which is administered at

1 the state level, which gives the state entities the role  
2 of playing, in essence, Solomon. Taking the plan and  
3 applying it to problems and when a conflict comes up between  
4 users, adjudicate it. I think our people would feel far  
5 less frustrated with that kind of arrangement than with our  
6 current arrangement.

7 But I have to say I believe our current  
8 arrangement is one of the most successful in the country.  
9 The Delaware and Susquehanna River Basin Commissions for  
10 all the faults people pointed to, represent a model for  
11 scientific water management that many other parts of the  
12 country like Texas and California have studied because the  
13 manner in which they have resolved many problems. So, we  
14 have some good points in what we are now doing. We don't want  
15 to throw it out, but we can certainly complement it  
16 and supplement it at the state level with a good strong  
17 program.

18 Q You may or may not know the answer to this,  
19 the State of New Jersey, for instance in comparison to  
20 Pennsylvania, the bottled water industry withdrawal in  
21 New Jersey, how is that in comparison to what is exist-  
22 ing in Pennsylvania? Mr. Levinson, you may or may not  
23 have some input into answering that too. You are certainly  
24 free to answer if you know. I am just curious from  
25 a standpoint with the regulation that goes on in New

1 Jersey relative to the type of regulation that may or  
2 may not exist in Pennsylvania, does this become a haven?  
3 Is that a fair or logical direction to go? I am not  
4 suggesting, I just probably want --

5 A I can answer in terms of the types of  
6 water users around the other states. I am not exactly  
7 sure in New Jersey what the range is. But Maryland  
8 has a very stringent water code system. It also has  
9 a very large number of bottled water users. But I think  
10 still the withdrawal there is about the same as here.  
11 It depends on where the springs and sources are located.  
12 The largest water users in this state aren't bottled  
13 water users. In fact, they are not public water supply  
14 systems which are only about 10 percent of our total use.  
15 The largest uses are power, agriculture and industry. And  
16 some of our largest growing users are the pharmaceutical  
17 side, some of the power side and agriculture is certainly  
18 growing as people are moving more and more towards irrigation  
19 to get higher yields on their crops.

20 Q I guess that is why at least in southeast  
21 Pennsylvania, more specifically in Chester County and  
22 Montgomery County area, where on one side of the river  
23 you have some of this relative to Chester County and  
24 then industry withdrawal. On the other side of the  
25 river you have a nuclear power plant and the usage

1 that are attendant thereto, and then you move a little  
2 bit further south in the triangular basins are all within  
3 probably five or six miles as the crow flies and you  
4 have a burgeoning pharmaceutical industry in the 202-422  
5 corridor. The cause for concern at least which is massive  
6 --

7 A Yes.

8 Q That I would suggest.

9 A In fact, it was that kind of pressure  
10 on the water resource that led us back in 1980 to adopting  
11 the groundwater protected area regulations, which I  
12 happened to be involved in drafting. Because we saw  
13 the pressures on the groundwater resource and saw that  
14 it was incapable of being marshalled at the local level.  
15 When you look at the centers of pumping versus the recharge  
16 rates, it was clear they were crossing all sorts of  
17 municipal and watershed boundaries, and it took concerted  
18 action at a higher level to make it work.

19 Q Let me shift gears a moment. From a  
20 legal standpoint, damages, if you will, some form of  
21 potential equitable relief for the individual that may  
22 in fact be harmed or individuals within a municipality,  
23 how is the state of the law as it currently is in Pennsylvania  
24 to provide redress of the property in some way, shape  
25 or form for property owners in and about the immediate

1 area, or for that matter, somehow the aquifer can be  
2 identified on a more regional basis within a municipality  
3 or group of municipalities that may be affected by bottle  
4 withdrawal for lack of a better word, excuse me, using  
5 your industry, your terminology.

6 MR. LEVINSON: We have been the target  
7 here so far today.

8 CHAIRMAN REBER: I do not necessarily  
9 agree with that. I try to take it a little bit away  
10 from bringing up the electric power and nuclear industry  
11 and the pharmaceutical.

12 MR. LEVINSON: Yes, sir. I thank you.

13 MR. WESTON: The common law in the areas  
14 that are not covered by the river basin commissions,  
15 the common law is very difficult to predict. Our case  
16 law in this state, absent those areas that are regulated,  
17 would seem to say that the deepest well and the most  
18 powerful pump wins without the provision of compensation  
19 for shallower wells that are interfered with.

20 BY CHAIRMAN REBER:(To Mr. Weston)

21 Q Unless it is commercial enterprise that  
22 goes to withdraw?

23 A Even commercial enterprises. In fact,  
24 the case that is probably most notable and ludicrous  
25 is a case called Dia Guy and Kempzell(phonetic) versus

1 New Jersey Zinc Company where the mining company dewatering  
2 to get to the mineral dewatered the entire Socken Valley  
3 and not a dime was paid. Now that rule has largely  
4 been replaced in the Susquehanna and Delaware areas  
5 by rules the commissions have adopted where any regulated  
6 water user, the more powerful users that are taking  
7 the water must, if they cause interference, provide either  
8 a replacement supply in kind, connect them to a public  
9 water supply, deepen their well or provide other compen-  
10 sation that the commissions ordered.

11 And the SRBC has gone one step further.

12 They have an entire process for petitioning and coming  
13 in and having that adjudicated. DRBC hasn't adopted  
14 it as a formal procedural rule, but in fact has been  
15 doing it for 20 years. And in those basins, the rules  
16 have been reversed and so a homeowner is given much  
17 more protection in terms of both the requirement for  
18 compensation, and more importantly, an avenue for achiev-  
19 ing it without having to go through expensive litigation.  
20 The worst problem is when you have a \$10,000 well that  
21 got injured and it cost you \$40,000 to get redress.  
22 That is not a water rights system that is working.

23 CHAIRMAN REBER: Thank you. Representative  
24 Schroder.

25 REPRESENTATIVE SCHRODER: Thank you,

1 Chairman Reber.

2 BY REPRESENTATIVE SCHRODER:(To Mr. Weston)

3 Q Mr. Weston, I want to address your concern,  
4 bifurcation of groundwater and surface water. Certainly  
5 that is something that would concern me too. I happen  
6 to acknowledge and agree with your arguments as to why  
7 that should not happen.

8 I want to point out that on page 2 in  
9 the Definitional Section of the Bill, whenever water  
10 is used in the bill, it does include groundwater and  
11 surface water. So, I guess I am just a little puzzled  
12 as to why you feel that is bifurcated here. Would  
13 you enlighten me on that?

14 A My understanding is as one goes later  
15 in the bill, and maybe I misread it, Representative,  
16 is that the regulatory provisions of the bill where  
17 it talks about what a municipality regulates seem to  
18 refer to groundwater than water.

19 Q Well I appreciate you pointing that out  
20 and we will certainly review that part of the bill to  
21 make sure that everything is consistent.

22 This issue of the fear of balkanization  
23 of water in the commonwealth is an interesting one.  
24 My question to you is do the recent efforts of the Delaware  
25 River Basin Commission with regards to the groundwater

1 protected area in allowing municipalities to plan on  
2 a watershed basis and propose certain restraints and  
3 limits, in your opinion, does that lead to the balkan-  
4 ization of water in this commonwealth, that type of  
5 effort that they are undertaking?

6 A My understanding of what they have done  
7 is they provide for municipalities that come in with  
8 integrated plans. The Commission would review them,  
9 but ultimately the decision about the issuance of a  
10 permit remains at the Commission level. You go one  
11 place to get your water allocation. And so the river  
12 basin commission in essence takes the input and where  
13 it is consistent with basin-wide concerns and priorities  
14 is going to follow. I don't think that is balkanization.  
15 The decision maker remains at the point.

16 Q But the basin commission is acknowledging  
17 and allowing I guess perhaps some different standards  
18 to be used in different regions of the groundwater protected  
19 area depending upon the needs of that particular locale.

20 A But it is based on a combination of their  
21 perspective as basin commissioners along with the local  
22 perspective and they will make sure that at least within  
23 that one watershed and the surrounding watersheds, which  
24 are tied together, that you have a uniform principle.  
25 The basin commissions do not require that every single

1 part, every acre be subject to exactly the same rule.

2 But the concept of uniformity without regard to political  
3 boundary is you treat like areas that are tied together  
4 in a common resource under a common set of rules. And  
5 so for example, if you have a ten square mile watershed  
6 that flows into a 20 square mile watershed, which is  
7 the way they go and down to 100 square mile watershed,  
8 and those resources are really shared in common. The  
9 basin commissions will make sure that all users in that  
10 larger area are treated fairly, and they have reserved  
11 that power in the way they have drafted the rule.

12 Q How do we balkanize water by basically  
13 allowing some areas to provide greater protection than  
14 what may be provided by the Delaware River Basin Commission  
15 now? I can see your argument we were allowing areas  
16 to have less protection, greater use, greater control, what-  
17 ever the case may be, so that someone downstream suffers  
18 as a result of the uses upstream. But in a situation  
19 where we might allow for greater protection to protect  
20 the resource or those downstream as well as those locally,  
21 and how are we balkanizing water in that regard?

22 A Let me give you the example the Supreme  
23 Court tackled in the State College Borough Water Authority  
24 case. There are multiple municipalities that were sharing,  
25 using the water within the water authority system.

1 Each had tried to adopt separate ordinances. In essence,  
2 not the well fields that were serving them in their  
3 own community. It was, please give us the water to  
4 take it from somewhere else. Again what happened was  
5 the water authority required to provide a supply of  
6 water was being chased from pillar to post. One community  
7 says, we should be able to adopt a more stringent set  
8 of rules in our part of the watershed or in our aquifer  
9 and they basically foist the demand over on the neighboring  
10 community.

11 So you go chasing around the watershed  
12 or around the multiple aquifers and the result is not  
13 a uniform system, but basically the community that last  
14 got a concern water is the one that ends up with all  
15 the well fields. One community wanted to adopt one  
16 kind of drought standard and another another kind of  
17 drought standard. One wanted to adopt one kind of compensation  
18 program for potentially affected wells, another another  
19 kind. That kind of system, the Supreme Court saw wasn't  
20 going to work. That what you do is put pressures on  
21 the wrong points on the resource and instead of seeing  
22 the resource as a whole, each one was going by their  
23 own likes. And so the concept of more stringent doesn't  
24 really work all the time in water resources management.  
25 Sometimes you have to say yes, it is better to do it

1 here than there. Because then we are spreading out  
2 enough of the demand in accordance with the supply in  
3 those areas so that the whole thing stays in balance.

4 BY REPRESENTATIVE SCHRODER: (To Mr. Levinson)

5 Q I would ask Mr. Levinson, both of you  
6 had mentioned about questions from Chairman Reber the  
7 amount of water that is used and a percentage basis  
8 being relatively small.

9 A Yes, sir.

10 Q From the bottled water industry; is that  
11 amount increasing, increasing or staying the same?

12 A I honestly can't tell you. I mean, I  
13 don't have the specific statistics, but based upon the  
14 growth of the bottled water industry, it is growing.

15 But it is still, even with that growth, we are still  
16 around the one percent level in terms of groundwater  
17 use on a statewide and a national basis. So, I mean,  
18 even with the substantial growth that has taken place  
19 over the last ten years of the bottled water industry,  
20 and there has, and I am sure our usage has increased,  
21 we are still less than one percent. I mean, we still  
22 have a long way to go to come anywhere near many more  
23 substantial users of either groundwater or surface water.

24 Q Is part of that growth attributable to  
25 the fact the FDA, Food and Drug Administration, basically

1 allows well water to be labeled and sold as spring water?

2           A     Not really. There is a lot of waters  
3 that are treated, municipal waters that are sold in  
4 bottles, and people feel comfortable that the additional  
5 filtration and treatment of those waters is what makes  
6 them comfortable about the drinking of it, and to some  
7 degree also the taste. And there clearly is a different  
8 taste. I am not going to argue which one is better,  
9 but a different taste than either what may come out  
10 of your well or may come out of municipal tap water.

11       So, it has very little to do with the issue of labeling.

12       I think most people, when they go and buy water, really  
13 are not particularly aware of where that source of water  
14 is. They are just comfortable with the fact that it  
15 is pure and to them it tastes good.

16                   REPRESENTATIVE SCHRODER: Mr. Chairman,  
17 I have no further questions at this time.

18                   CHAIRMAN REBER: Thank you very much.

19       At this time I would like to note for the record that  
20 we will in fact keep the record open for at least ten  
21 days or ten days, I should say, from today's date in the  
22 event there is anyone that wants to present any additional  
23 written testimony or any modifications of their testimony.

24                   At this time I would like to thank all  
25 the presenters today. I deeply appreciate you all taking

1 your valuable time to come before the Committee on this  
2 issue. As you can see I think the sincere and major  
3 concern for various interest across the Commonwealth.

4 At this time I will note that the Committee  
5 stands in recess. This hearing is adjourned.

6 (Whereupon at 12:50 p.m. the hearing  
7 was adjourned.)

8  
9 I hereby certify that the proceedings and  
10 evidence are contained fully and accurately in the notes  
11 taken by me during the hearing of the within cause, and  
12 that this is a true and correct transcript of the same.

13  
14 Dorothy M. Malone  
15 Dorothy M. Malone  
16 Registered Professional Reporter

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